

RECALIBRATING AMERICA'S FLAWED APPROACH TO DRONE WARFARE

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Abstract

Unmanned aerial vehicles—widely referred to as “drones”—are a key instrument of American foreign policy. Yet, despite their importance, limited scholarship has been devoted to assessing the effectiveness of drone strikes as a means of advancing US objectives in the fight against Islamic extremism.

This thesis examines the strategic value of the U.S. targeted killing program and finds that drones strikes, while tactically effective, have been employed in a manner which has undermined the pursuit of American strategic aims in this conflict. Specifically, I conclude that although drones can serve as a highly-effective tool for degrading the capabilities of extremist groups, the lack of precision and discretion which has characterized U.S. drone operations has served to alienate populations whose hearts and minds the United States has sought to win.

Next, in light of the program’s shortcomings, I assess two prominent proposals that could help to meaningfully address these deficiencies. The 9-11 Commission called for the creation of a single Joint Committee on Intelligence in the mold of the now-defunct Joint Committee on Atomic Energy—a reform which has been widely-touted as a means of enhancing congressional oversight of clandestine operations, including drone strikes. However, after reviewing the historical record, I conclude that this model would not improve—and could actually undermine—the legislative branch’s independence and objectivity.

Another widely-discussed reform is President Obama's 2013 proposal to transfer full control of drone operations to the Department of Defense. I argue that this consolidation would likely improve the transparency of drone operations but that additional benefits will only be realized if this change serves as a catalyst for—and is implemented in concert with—other badly-needed reforms.

Finally, in the conclusion, I outline the policy implications of these findings and recommend, among other steps, that Congress and the Administration act to further restrict the use of drone strikes and to provide greater transparency regarding the policies that govern US targeting decisions.

Thesis readers: Dr. Nicholas E. Reynolds and Dr. Michael Vlahos

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Introduction: The Critical—and Growing—Importance of Drone Warfare

Unmanned aerial vehicles—widely referred to as “drones,” even in the academic literature—are, as the name suggests, aircraft remotely piloted by operators who are sometimes located thousands of miles away. Beginning in the Bush Administration and to an increasing degree under President Obama, they have come to represent a key instrument of American power overseas.

Since the 9-11 attacks, American drones have flown an untold number of missions over territory from West Africa to Central Asia and beyond. With the ability to linger for hours over a target, they are used not just for surveillance but also as a platform for firing precision-guided missiles. The first US strike was reportedly in Yemen in 2002 and intense drone operations have subsequently been conducted over the battlefields of Iraq and Afghanistan as well as in Pakistan, Yemen and Somalia.¹ The aircraft themselves are launched both from the US as well as from bases around the world—some known to the public and others secret.

In part because of its novelty, drone warfare has received copious media and academic attention in recent years. And yet, its importance to American foreign policy may still be under-appreciated. Drones operated by American pilots have killed hundreds of insurgents and extremists and generated an equal (if not greater) number of civilian casualties and deaths. Moreover, if and when US combat troops finally depart Afghanistan and the American-led bombing campaign against the Islamic State of Iraq and the Levant (ISIL) winds down,

¹Currier, Cara, “Everything we know so far about drone strikes,” ProPublica, February 5, 2013

drone strikes may represent the principal—if not the only—kinetic component of the war on terror.

However, despite the centrality of drone strikes to American efforts in this era-defining conflict, relatively little critical analysis has been devoted to their effectiveness as a means of advancing US strategic objectives. Instead, much of the debate has centered on other interesting but arguably less consequential questions—from the accuracy of American drones to the legality of targeted strikes away from the traditionally-defined battlefield to the ethics of killing at such a far remove from one's enemies.

These concerns have arguably served to shift the focus of the public discourse away from the true test of America's target killing program – simply, put, is it positively contributing to the achievement of America's broader aims in what is shaping up to be an enduring struggle against Islamic extremism? And if not, how should these efforts, which stand at the very center of the US response to this global threat, be reformed or recalibrated to ensure that they are, in fact, serving America's interests?

This, in a nutshell, is the subject of the three chapters that follow. First, I examine the value of the US targeted killing program and find that drones strikes, while tactically effective, have been employed in a manner which has rendered them strategically ineffective. Next, in light of the program's shortcomings, I

assess two prominent proposals that could help to meaningfully address these deficiencies.

Specifically, in the first chapter, I find that while drones are a highly-effective tool for degrading the capabilities of extremist groups, this instrument of American power has been used bluntly where surgical precision would have been preferable. In general, the Obama administration, the CIA and the Department of Defense have broadly failed to practice sufficient transparency or discretion in authorizing drone strikes. And this excessive but also highly-secretive use-of-force has served to push the affected populations in countries from Central Asia to the Horn of Africa into the arms of very men the attacks were meant to destroy.

Over the next two chapters, recognizing the flaws and limitations of America's existing drone strategies, I examine the barriers that have prevented a more effective approach from being implemented and assess key reforms that have been proposed to address the drone program's shortcomings. For example, despite mounting civilian casualties and clear evidence that the use of American drones deserves to be urgently reexamined, when it comes to this critical aspect of American foreign policy, Congress has largely surrendered its constitutional role as check on the Executive. Unfortunately, this is consistent with the legislative branch's broader failure to conduct rigorous oversight of US clandestine programs.

In Chapter II, I evaluate one of the most prominent remedies for this dereliction of duty by a Congress which has proven itself overly willing to defer to the Administration on the conduct of American drone strikes. The 9-11 Commission, tasked with developing recommendations to address the security and intelligence failings that abetted the 2001 attacks, called for the creation of a single Joint Committee on Intelligence. Explicitly modeled after the famous Joint Committee on Atomic Energy (JCAE), this panel would replace the current House and Senate Select Committees on Intelligence and would, in theory, be empowered to hold the intelligence community's collective feet to the fire.

To assess the wisdom of this course of action, I evaluate the record of the JCAE in Chapter II and find that the committee was indeed exceptionally powerful and that all components of the American nuclear enterprise—from the Department of Energy to the US military—were extremely solicitous of the panel's whims. However, rather than serving as an effective check on successive Presidents' plans for the construction of nuclear power plants and the expansion of the US nuclear arsenal, the members of the JCAE arguably served as the loudest and most successful cheerleaders for these endeavors.

Indeed, the committee became, in the opinion of observers at the time, almost a co-decision maker on nuclear matters alongside the Administration. And because of its unique, bicameral structure and exclusive access the information,

the JCAE was able, for much of its history, to effectively block those in Congress who raised questions about the safety and economic-sense of expanding American nuclear power.

In light of this disturbing record and the fact that the two intelligence committees in Congress are arguably overly sympathetic to the views of the agencies they are charged with overseeing, I argue that the JCAE represents the wrong model for improving oversight of clandestine operations, including drone warfare.

Instead of consolidating congressional power, I suggest that Congress and the Administration should consider broadening and diversifying the members and committees with a say in America's drone warfare policies. The possibility of an increase in the number of unauthorized leaks is, in my view, outweighed by the potential for more independent, clear-eyed oversight of American drone strikes.

Another key reform aimed at reducing the fundamental lack clarity and transparency which has come to characterize American drone warfare is a widely-discussed proposal to transfer full control of drone operations to the Department of Defense. At present, the CIA and the Department of Defense both operate parallel drone programs and maintain separate but overlapping "kill lists" of terror suspects marked for elimination.

Endorsed by prominent critics of the targeted killing program from Micah Zenko of the Council on Foreign Relations to House Select Committee on Intelligence

Ranking Member Adam Schiff (D-CA) to President Obama himself, this shift holds out the promise of drone operations conducted overtly and in accordance with policies known to the public.

DOD drone operations follow clear procedures, including vetting across military services—the same procedures that apply to strikes launched from conventional platforms. And following each attack, a review is conducted to determine “whether the target was carried out in line with rules of engagement and how the strike’s success or failure fits into the larger operational strategy.”² In contrast, according to reports, the CIA targeting process is far-more efficient and includes fewer internal checks and balances. The intelligence agency also closely guards the content of its drone policies, limiting transparency and impeding effective oversight.

In part for these reasons, in Chapter III, I argue that shifting drone operations away from the CIA could have significant benefits. The deniability of CIA drone strikes has long been cited as their principal virtue, conveniently allowing foreign governments to look the other way when American attacks are launched on their sovereign territory. However, I argue that, at this stage, the “deniability” that constitutes the core rationale for involving the CIA in drone operations is a transparent fiction – it is abundantly clear who is responsible when, say, a convoy in northern Pakistan is suddenly struck by missiles from above. We

² The Stimson Center, “Recommendations and Report of the Task Force on US Drone Policy,” April 2015

should recognize—as our opponents clearly do—that strategic communications are critical in the struggle against Islamic extremism. And America’s refusal to disclose anything about these strikes, including why they were launched and who was killed, has severely undermined American efforts to win hearts and minds across the Islamic world.

However, echoing the views of legal scholar Marty Lederman, I contend that the benefits of this transition will hardly be automatic. Contrary to the claims of some critics, there is nothing in statute that would prevent the US military from conducting its own drone operations in exactly the same, secretive manner as the CIA. That’s why I argue that the full benefits of shifting drone operations to DOD control will only be realized if this sweeping change serves as a catalyst for—and is implemented in concert with—other badly-needed improvements.

To be clear, consolidating drone operations at DOD is not a definitive solution to the serious problems which have served to undermine the strategic effectiveness of American drone strikes. Based on the available evidence, however, this simple reform would almost certainly mark an improvement over the status quo. Transitioning to a single military drone program would streamline and simplify oversight. It would also move drone operations away from an organization institutionally committed to secrecy to one traditionally bound by the laws of war. In addition, this shift would have the added benefit of ending the unfortunate

precedent set in the post 9-11 era of the CIA essentially acting as a kind of secret Air Force, regularly conducting covert, quasi-military operations.

Finally, in the conclusion, I outline what those reforms might look like and why they are so critical to America's broader efforts in the war on terror. At the most basic level—mirroring the recommendations of Zenko and others—I make the case that US drone strikes must be conducted with greater precision, discretion and transparency. That means only targeting high-value individuals who are known to US intelligence; not low-level fighters or, worse still, civilians who happen to live near the bad guys. It also means instituting policies to ensure that drone strikes are employed in manner that severely limits this kind of unnecessary collateral damage. And, finally, it means disclosing those policies to the public and providing a full accounting to Congress and the American people of when and how drones are used.

Of course, these vital changes are unlikely to be made—and even less likely to be sustained—if the legislative branch continues to abrogate its constitutional responsibility to oversee drone operations. Congressional action will be critical if the targeted killing program is to maximize its strategic value to the United States.

Ultimately, I tie the failures of American drone warfare to a misapprehension about the nature of the conflict in which the United States has found itself

inextricably entangled. The war on terror is a contest of ideas as much as physical confrontation. It matters very little that American drones are successfully killing scores of extremists if these strikes are abetting the recruitment of scores more. It's time for American strategists to better align the instruments of American power, including drones, with the social and political dynamics of this conflict.

**Chapter I: Assessing the Effectiveness of the Obama Administration's
Targeted Killing Program**

Introduction

In 2013, 11 vehicles carrying the members of a large wedding party in southern Yemen, near the remote town of Radda, were struck by hellfire missiles launched from American drones hovering thousands of feet overhead. All told, 17 people perished in the attack and at least 22 suffered serious injuries. 5 Islamic extremists, possible members of the militant group Al Qaeda in the Arabian Peninsula (AQAP), were among those killed. The rest were apparently innocents, people from a remote corner of Yemen who died because of decisions made on the other side of the world.³ The incident understandably sparked considerable controversy and led to renewed calls for reforming President Obama's drone policies.

Attacks like this one and the various responses they inspire pose important questions for American policymakers. Do these strikes, in the words of a Congressional Research Service analysis, "alienate the local population, strengthen nationalist and anti-American forces, and cause too much collateral damage—thereby exacerbating the terrorism threat over the long term?"⁴ Or are they a critical instrument of American foreign policy—one that ultimately saves lives, both at home and abroad? These dueling positions stand at the center of the debate on the Obama administration's targeted killing program and how that debate unfolds will have significant implications for America's approach to combating violent Islamic extremism in the coming decade.

³ Los Angeles Times, "U.S. drone strike on Yemen wedding party kills 17," December 13, 2013

⁴ Congressional Research Service, "Yemen: Background and U.S. Relations," November 12, 2013, Pg. 7

The 9-11 tragedy precipitated a dramatic transformation of American defense policy. The United States launched two protracted wars and spent untold billions bolstering the security of the American homeland and augmenting the nation's intelligence-gathering capabilities. Just as importantly, Al Qaeda also compelled the U.S. government to implement new tactics and technologies to confront the novel threat posed by organized, stateless terrorism.

Among the most controversial of these developments was the adoption of the targeted killing of terror suspects—encompassing both drone strikes and Special Forces operations—as the centerpiece of the fight against Islamic extremism. Though the program was conceived by the Bush administration, this approach was enthusiastically embraced by President Obama, who dramatically expanded the scale and geographic scope of strikes against terrorist targets. During his first term, Obama approved fully six times as many drone strikes as his predecessor had over his entire eight year tenure in office.⁵

On March 2, 2011, President Obama authorized the most famous and consequential of these targeted killings when Navy Seals breached Osama bin Laden's compound in Abbottabad, Pakistan, and executed the al Qaeda leader before escaping back to Afghanistan. But despite the momentous success of

⁵ Michael J. Boyle, "The Costs and Consequences of Drone Warfare," *International Affairs*, January 2013, Vol. 89, pg 2

this operation, the Obama administration's program, and especially its reliance on drone warfare, continues to provoke contentious debate, both domestically and internationally.

The Administration and its supporters contend that surgical strikes against al Qaeda and other extremist groups have severely undermined their capabilities, preventing them from successfully attacking American interests. Critics, however, continue to question the transparency of the target approval process and the legality of the program under U.S. and international law.⁶ The Obama administration has also faced intense criticism over the number of innocents and low-level operatives killed in operations aimed at eliminating individual terror suspects.⁷ The program's fiercest detractors accuse President Obama of resorting to drone strikes in order to avoid the legal quagmire that surrounds what to do with terror suspects once they have been apprehended and placed in U.S custody.⁸

While the ethical questions associated with the targeted killing of terror suspects are undeniably important, especially for a nation that still aspires to be a "City on the Hill," these concerns are beyond the scope of my

⁶ Leila Sadat, "America's Drone Wars," Case Western Reserve Journal of International Law, Fall 2012, Vol. 45, Issue 1-2, pg 224-228

⁷ Amitai Etzioni, "The Great Drone Debate," Military Review, March/April 2013, Vol. 93, Issue 2, pg 2-3

⁸ John Yoo, "Obama, Drones and Thomas Aquinas," Wall Street Journal, 6/7/2012, <http://online.wsj.com/news/articles/SB10001424052702303665904577452271794312802>

research. Instead, this paper will focus on more immediate and practical concerns; specifically whether the program does, in fact, enhance America's national security or whether its various attendant negative consequences outweigh the benefits of eliminating individuals who pose a threat to the United States. Drone strikes have killed hundreds of innocents and stirred up intense levels of resentment towards the United States in Afghanistan, Pakistan, Somalia and Yemen. However, the available evidence also suggests that the targeted killing of terror suspects can be an effective means of degrading the capabilities and undermining the morale of extremist groups. In light of these findings, the Administration would be wise to consider new reforms to its targeted killing program to maximize its effectiveness and minimize its potential to radicalize local populations impacted by American drone attacks.

This chapter seeks to provide an even-handed assessment of the effectiveness of the Obama Administration's targeted killing program. First, I review the prevailing arguments both for and against US strikes against suspected terrorists. Next, I examine two cases—one in Afghanistan and the other in Israel—that show how the elimination of terrorist leaders can serve to degrade the capabilities of extremist groups, resulting in a reduction in the sophistication and lethality of the attacks they launch. However, despite their promise, I review statistics and first-hand reporting from Pakistan that, taken together, indicates that the manner in which US strikes have been conducted has fostered significant enmity towards the United States among the affected population.

Finally, recognizing these costs and benefits, I offer recommendations for reforming the policies governing the targeted killing program that could reduce its potential to alienate and radicalize civilian populations.

Support for the Targeted Killing Program

For its supporters, the basic case for the Obama administration's targeted killing program is simple: it saves American lives. In defending the program, the President himself has pointed to terror conspiracies he claims were thwarted by these strikes. "To begin with, our actions are effective..." he said in a May 2013 speech, "Plots have been disrupted that would have targeted international aviation, U.S. transit systems, European cities and our troops in Afghanistan."⁹ Of course, like similar assertions about internet surveillance activities and other controversial aspects of the War on Terror, the basis for these claims is difficult to verify.

At a time when Americans are loathe to consent to putting "boots on the ground" virtually anywhere, targeted killings and specifically drone warfare are appealing both practically and politically. For policy-makers, drone strikes represent a low-risk option with limited potential for American casualties. They

⁹ New York Times, "Transcript: Obama's Speech on Drones," 5/23/2013, http://www.nytimes.com/2013/05/24/us/politics/transcript-of-obamas-speech-on-drone-policy.html?_r=0

are also accurate and effective, say supporters. Drones can linger over a potential target for long periods—a Predator drone can remain aloft for as long as 20 hours—before seizing the perfect moment to fire a precision guided Hellfire missile at the enemy.¹⁰

Supporters of the program also argue that decapitating terrorist organizations is an effective tactic. Just as in more mundane lines of work, extremist groups have discovered that good leaders are hard to come by and cannot be readily replaced.¹¹ When top commanders are eliminated, the men who attempt to fill their shoes are likely to be less experienced and more prone to making critical mistakes than their predecessors.¹²

The constant fear of drone strikes also makes it far more difficult for terrorist organizations to effectively plan and prepare for future operations. Afraid of drawing attention to themselves, militant leaders may eschew electronic communications and avoid gathering their forces in large numbers.¹³ This creates significant coordination challenges and limits the complexity of the operations they can successfully mount. In addition, the “unpredictability and terrifying anticipation of sudden attack” can have a meaningful psychological

¹⁰ Mark Bowden, “The Killing: How to think about drones,” The Atlantic, September 2013

¹¹ Kenneth Anderson, “The Case for Drones,” Commentary, June 2013, Vol. 135, Issue 6 , pg 8

¹² Daniel Byman, “Why Drones Work,” Foreign Affairs, July/August 2013, Vol. 92. Issue 4, pg 2

¹³ Byman, pg 2

impact on terrorist leaders.¹⁴ At some point they may become too consumed with simply surviving to plot new attacks against American targets.

Even where they acknowledge the drawbacks of targeted killings, supporters argue that this approach is superior to the available alternatives. They believe drone strikes offer a more accurate and humane option than attacking with fighter aircraft, deploying conventional ground forces or requesting that local forces take up the fight. As President Obama stated in May:

“Conventional airpower or missiles are far less precise than drones, and are likely to cause more civilian casualties and more local outrage.

And invasions of these territories lead us to be viewed as occupying armies, unleash a torrent of unintended consequences, are difficult to contain, result in large numbers of civilian casualties, and ultimately empower those who thrive on violent conflict.”¹⁵

Outsourcing the elimination of terrorists to foreign governments is also a poor alternative, according to supporters. “...using drones,” argues Daniel Byman, “is far less bloody then asking allies to hunt down terrorist on the United States’ behalf.”¹⁶ The Pakistani military’s bloody incursions into its Federally

¹⁴ Anderson, pg 7

¹⁵ New York Times, “Transcript: Obama’s Speech on Drones,”

¹⁶ Byman, pg 3

Administrated Tribal Areas to suppress extremist groups offer a case in point. As Kenneth Anderson notes, "...villagers are aware that the American drones are undertaking strikes that the Pakistani government might otherwise undertake. Critics often neglect to focus on the Pakistani governments' regular and brutal assaults in the tribal zones...voices in the Pakistani newspapers have often made note that the tribal areas fear the Pakistani army more than they fear U.S. drones."

Moreover, it's telling, supporters say, that despite their public comments, foreign governments have privately consented to, and even encouraged, American drone strikes within their borders. "In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign," writes Byman. "In reality, the governments of both countries have supported it." Pakistan has repeatedly received early warnings regarding upcoming strikes and, at one time, allowed U.S. drone facilities to be based in its territory. Similarly, to deflect public criticism, former Yemeni President Saleh claimed on multiple occasions that his country's air force was responsible for strikes that had actually been perpetrated by American drones.

Supporters also dismiss concerns about public opinion in Pakistan and other countries. Kenneth Anderson notes that, in a recent study, though many Pakistanis expressed anger over American drone strikes, half of the population

was completely unaware of the program's existence.¹⁷ A significant segment of the Pakistani population also supports the program because of the "significant toll that terrorists and armed non-state groups take on the civilian population."¹⁸

Finally, as Byman frankly acknowledges, "it has become more politically palatable for the United States to kill rather detain suspected terrorists."¹⁹

Unless the views of the American public change, supporters suggest targeted killings may continue to be unavoidable in the future.

The Case Against Targeted Killings

While the moral and legal arguments against targeted killings are complex and varied,²⁰ the prevailing criticisms of their utility can be distilled much more succinctly. According to the Administration's detractors, by embracing strikes against terror suspects, President Obama has allowed short-term tactical considerations to outweigh America's long-term strategic interests. Put another way, drone strikes have succeeded in achieving momentary gains but only at the expense of the U.S. government's broader objectives in the War on Terror.

¹⁷ Anderson, pg 9

¹⁸ Stanford International Human Rights and Conflict Resolution Clinic, "Living Under Drones," September 2012, pg 12

¹⁹ Byman, pg 3

²⁰ Leila Sadat, "America's Drone Wars," Case Western Reserve Journal of International Law, Fall 2012, Vol. 45, Issue 1-2; Pardis Kebriaei, "The Distance Between Principle and Practice in the Obama Administration's Targeted Killing Program: A Response to Jeh Johnson," Yale Law & Policy Review, Fall 2012, Vol. 31, Issue 1; and Amitai Etzioni, "The Great Drone Debate," Military Review, March/April 2013, Vol. 93, Issue 2

“Drones are only effective,” argues Michael Boyle, “if they contribute to achieving U.S. strategic goals in a region, a fact which is often lost in analyses that point only to body counts as a measure of worthiness.”²¹ According to critics, by equating success in the War on Terror with the number of terrorist leaders eliminated, the Administration has lost sight of the strategic costs of the targeted killing program.

One of the most important such costs, say critics, is that by embracing drone strikes, the Administration has effectively handed al Qaeda a powerful propaganda tool. According to Audrey Cronin, video of these attacks and their sometimes harrowing consequences has served as an effective means of attracting new recruits to extremist causes. The strikes, she says, play into an established al Qaeda narrative of “Americans as immoral bullies” who perpetrate “indiscriminate violence against Muslims.”²²

It’s worth noting that the would-be Times Square bomber, Faisal Shahzad, cited drone attacks in Iraq and Afghanistan that killed scores of innocents in explaining his intention to murder as many Americans as possible. “They kill women, children, they kill everybody...They’re killing all Muslims,” Faisal

²¹ Michael J. Boyle, “The Costs and Consequences of Drone Warfare,” *International Affairs*, January 2013, Vol. 89, pg 13

²² Audrey Kurth Cronin, “Why Drones Fail,” *Foreign Affairs*, July/August 2013, Vol. 92. Issue 4, pg

reportedly told a judge.²³ His comments have been cited critics who argue that this crucial component of the War on Terror is actually serving to inspire more terror attacks.

Another negative consequence of the program, according to critics, is that it continues to enflame anti-American sentiment in the Muslim world and that it serves to alienate and radicalize the populations of regions exposed to frequent drone strikes. While causal relationships are difficult to draw and the data is widely disputed, critics contend that these attacks have driven popular opinion of the U.S. to new lows. A Pew Research Center poll conducted in June 2012 found that almost three-fourths of all Pakistanis now consider the United States to be an enemy – evidence, critics say, that the strikes are driving the Pakistani people into the arms of America's foes.²⁴ This hatred, argues Boyle, has compromised American efforts to upgrade the capacity of the Pakistani state and improve its resilience to domestic extremist elements.

In the regions of Pakistan most heavily impacted by drone warfare, these effects are felt much more acutely. While the Administration's rhetoric regarding the program has focused almost exclusively on high-value terrorist targets, critics allege that the vast majority of attacks have been directed at middle and low-ranking operatives. Their deaths have, in turn, enraged the

²³ Boyle, pg 1

²⁴ Boyle, pg 16

tribes, clans and families to which they belonged, inspiring angry relatives to enlist in extremist groups and causes.

This sense of injustice is significantly magnified when those who perished were not terrorists or militants but mere bystanders, people caught in the wrong place at the wrong time. "...consider the emotions of those on the receiving end left to pick up the body parts of their husbands, fathers, brothers, friends," writes Mark Bowden. "...imagine the sense of impotence and rage."²⁵ Yet, according to drone warfare skeptic Carla Robbins, the powerful emotions unleashed by these strikes aren't lost on the Administration. She cites retired General Stanley McChrystal who observed that in Pakistan, the strikes "are hated at a visceral level, even by people who've never seen one."²⁶

More than the mere fact that friends and relatives are dying at the hands of a foreign power, it is the nature of drone warfare itself that is driving Pakistanis into the arms of extremists, according to critics. Specifically, because American technology in the form of drones appears so arrogant and so omnipotent, argues Bowden, it lends legitimacy to terrorism as "...the only viable option for the weak to fight against a powerful empire."²⁷

²⁵ Bowden, pg 61

²⁶ Carla Anne Robbins, "The Trouble with Drones," Bloomberg Business Week, 2/18/2013, Issue 4317, pg 2

²⁷ Bowden, pg 61

Responding to this widespread antipathy, politicians in Pakistan and elsewhere across the Muslim world have increasingly staked out anti-American positions. Yet, despite their public pronouncements, they appear powerless to stop the American strikes. For Boyle, this is the central contradiction at the heart of the targeted killing program. The United States is simultaneously investing billions to bolster the capabilities of the Pakistani and Yemeni governments while at the same time undermining their legitimacy in the eyes of their people by making them appear “helpless and subservient” to their American benefactors.²⁸

Towards an Effective, Transparent and Limited Targeted Killing Program

Analysts and academics on both sides of this debate are prone to overstatement, exaggeration and absolutism. Too often, drone warfare is either hailed for its devastating effectiveness or decried as an affront to America’s values and America’s national interest. In reality, the relevant facts remain somewhat ambiguous, almost all of the statistics on casualties and deaths are unreliable and it will probably be many years before a full accounting of the program is possible.

As a result, any conclusions about the program effectiveness must be drawn circumspectly. That said, however, it appears that the targeted killing of terror suspects has been responsible for some modest, tactical gains in recent years against the Taliban and, especially, al Shabaab in East Africa. Yet serious

²⁸ Boyle, pg 3

concerns remain regarding the extent to which drone strikes are effectively furthering America's strategic objectives.

Beyond the targeted killing of individuals who wish to harm the United States, a number of other factors have contributed to the American government's recent success in Afghanistan. For example, the nation's intelligence capabilities are significantly stronger than they were a decade ago and Al Qaeda and its affiliates can count on the support of fewer friendly governments. While progress in these areas complicates efforts to isolate the effectiveness of the targeted killing program, case studies provide a means of teasing out how well the program is serving America's strategic interests.

The deaths of four Taliban leaders in Afghanistan between 2007 and 2008 offer a window into how targeted strikes have reshaped the behavior of militants in the region. Alex Wilner examined the deaths of Mullah Dadullah, Mullah Mahmud Baluch, Qari Faiz Mohammad, and Mullah Abdul Matin—high ranking Taliban commanders who were killed in four separate American strikes over a one year period.²⁹ He then used public source data to analyze the impact of the loss of these men on the Taliban's ability to wage war against American and Afghan forces in Southern Afghanistan.

²⁹ "Alex S. Wilner, "Targeted Killings in Afghanistan: Measuring Coercion and Deterrence in Counterterrorism and Counterinsurgency," *Studies in Conflict and Terrorism*, Issue 33, 2010, pg 316

Wilner is a supporter of the targeted killing program and was initially surprised to discover that the total number of attacks launched by the Taliban actually increased slightly in the period following the deaths of the four commanders. However, as he rightly points out, assessing only the number of militant attacks, as some critics have done, misses the real impact of the targeted killing program.

Wilner determined that following the commanders' deaths, while more attacks occurred, the complexity and lethality of Taliban bombings in the area significantly decreased. "As leaders and facilitators were eliminated," writes Wilner, "the Taliban began using less sophisticated forms of violence that required less energy, expertise and time to organize effectively."³⁰

In essence, without these leaders, the Taliban collectively became less competent and less professional. Their improvised explosive devices (IEDs) now failed to detonate more than a third of the time, becoming 15 percent less reliable overall. Similarly, the number of suicide bombings—the Taliban's most effective tactic against coalition forces—fell by over 30 percent as the Taliban increasingly turned to other types of attacks that were easier to organize and execute.³¹

³⁰ Wilner, 319

³¹ Wilner, 319

The deaths of the four commanders also spurred the Taliban leadership to make key policy changes, which may have contributed to the declining effectiveness of the group's efforts. Subsequently, members of the Taliban central command were barred from operating in Southern Afghanistan because of the "high risk of death." In addition, "control over military strategy [was] decentralized and passed down to lower-level district commanders."³²

These changes in organizational structure and the Taliban's decreasing professionalism and operational success offer meaningful evidence of the effectiveness of the targeted killing program. US strikes successfully modified the group's behavior and degraded its capabilities. According to Wilner's research, at least in the short term, the targeted killing program had clearly dealt a powerful blow to the Taliban in Southern Afghanistan.

Israeli statistics reveal a similar pattern. Israel's targeted killing program, which ceased its operations in 2005 in response to international pressure, focused on high ranking leaders in Hamas and Hezbollah who were actively involved in terrorist plots aimed at Israeli citizens. Just as in Afghanistan, Israeli strikes against individual terrorist leaders had a limited impact on the overall number of terror attacks in Israel. However, mirroring Wilner's findings, the lethality of these attacks declined significantly as a result of the Israeli program. While the number of Hamas bombings varied widely from year to year, the number of Israeli lives lost to terrorism consistently decreased in the period from 2001 to

³² Wilner, 322

2005.³³ Just as in Afghanistan, Hamas' activities became increasingly ineffective as the organization proved unable to replace trained operatives killed in Israeli strikes.

These examples and others confirm the basic model of how and why the targeted elimination of terror suspects can work to advance US interests. "The constant removal of leadership leaves an organization in general disarray."³⁴ Commanding and communicating with lower level personnel becomes more difficult. The group's freedom of movement becomes constrained. The building of bombs is disrupted as skilled operatives are eliminated. Ultimately, significant time and resources that might have gone towards plotting new attacks are instead consumed by the constant task of simply trying to stay alive.

The end result, as seen in both the Afghan and Israeli case examples, is not necessarily a decrease in the overall level of terrorist activity but rather a decline in the potency of the targeted group's attacks. Targeted killings breeds a metastasizing dysfunction within the militant organization, severely limiting its ability to take meaningful action.

Still, none of this is to say that the concerns raised by critics of the targeted killing program are illegitimate. Indeed, there is ample evidence that missiles

³³ Steven Clark, "Targeted Killings: Justified Acts of War or Too Much Power for One Government," *Global Security Studies*, Summer 2012, Vol. 3, Issue 3, pg 30

³⁴ Wilner, pg 312

launched indiscriminately from American drones have unjustly killed large numbers of civilians. And this death and destruction, beyond its moral implications, may be hampering the pursuit of America's strategic goals in the war on terror by driving affected individuals into the arms of the very groups the U.S. is seeking to combat.

First, it is worth noting that public opinion data across the Muslim world show nearly unanimously opposition to the US drone program. According to a 2013 survey conducted by the Pew Research Center, drone strikes are supported by only 5 percent of Pakistanis. Pew also recorded similarly negligible levels of popular approval in every Muslim country where polls were conducted, including Egypt, Jordan, Turkey, Indonesia, Tunisia, and the Palestinian territories

More importantly, and with the caveat that these figures may be unreliable, prominent NGO's have also managed to gather statistics related to individual drone strikes that, collectively, paint a disturbing picture. According to estimates from the New America Foundation, the approximately 300 to 400 American drone strikes conducted worldwide between 2008 and 2013 killed between 1,963 and 3,293 people, of whom 430 to 635 were innocent of any involvement with violent extremist groups.³⁵ In Pakistan—reportedly the site of the most deadly American drone operations—the Bureau of Investigative

³⁵ Robbins, pg 3

Journalism believes that since 2004, between 423 and 965 civilians (including as many as 207 children) have been killed in drone strikes while between 1,154 and 1,734 people have suffered serious injuries in these attacks.³⁶

Figures from official sources also reflect high levels of non-combatant casualties from drone strikes. A 2013 United Nations report cites Pakistani government statistics indicating that at least 400—and probably far more—civilians had been killed in drone strikes since 2004.³⁷ (Pakistani officials noted that security concerns, the remoteness of the affected regions, and the local practice of immediately burying the dead made accurate reporting difficult. They told UN investigators that, as a result of these impediments, the numbers they provided “were likely to be an underestimate.”)³⁸

Repeated, futile efforts to kill a small number of insurgents can also produce high numbers of casualties. The British NGO Reprieve, citing casualty figures that are significantly larger than the official statistics, claims that strikes aimed at just 24 suspected terrorists in Pakistan cumulatively produced 874 civilian deaths over a four year period.³⁹ In many cases, the terrorists were reported killed in official documents only to reappear later, prompting yet more strikes and fresh rounds of casualties. Across all countries where data was available,

³⁶ The Bureau of Investigative Journalism, “Get the Data: Drone Wars,” August 10, 2015, <https://www.thebureauinvestigates.com/category/projects/drones/drones-graphs/>

³⁷ United Nations, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” September 18, 2013, pg. 8

³⁸ Ibid

³⁹ Reprieve, “You Never Die Twice: Multiple Kills in the US Drone Program,” November 20, 2014, pg. 2

the group found that repeated efforts to kill just 41 men could be linked to more than 1,000 other deaths⁴⁰ -- heart-wrenching numbers that attest to the lack of precision and discretion that continues to characterize American drone warfare.

A report released in May 2013 by Amnesty International furnishes disturbing details to match these troubling statistics. It describes the death of an elderly grandmother in Waziristan who was killed by a drone while picking vegetables with her grandchildren. Amnesty also documented a case in which 18 unarmed laborers, including at least one minor, died following a series of strikes on an isolated village in Northern Pakistan.⁴¹

For communities in the crosshairs, the cumulative effect of drone strike after drone strike can be devastating. People in areas prone to drone activity are constantly wary of being mistakenly targeted. American attacks have “inhibited normal economic and social activity” and “turned neighbors on neighbors and fuelled communal distrust in a society where overlapping family, tribal and social ties are crucial.”⁴² Miram Shah, in Northwest Pakistan, site of perhaps more of these attacks than any other settlement in the world, has become a

⁴⁰ Ibid

⁴¹ Amnesty International, “‘Will I Be Next?’ US Drone Strikes in Pakistan,” 10/22/2013, <http://www.amnestyusa.org/research/reports/will-i-be-next-us-drone-strikes-in-pakistan>

⁴² Boyle, 21

“fearful and paranoid town” where sales of “sleeping tablets, antidepressants and medicines to treat anxiety have soared.”⁴³

The impact of American strikes over time was summed up by a Pakistani villager who explained to Stanford researchers that, “Before this we were all very happy. We lived a very good life. But after these drones attacks a lot of people are victims and have lost members of their family. A lot of them, they have mental illnesses.”⁴⁴

When critics allege that the targeted killing program is doing more harm than good, these are the social consequences they cite as inspiring “blowback” against Americans. (Anderson, 8) And while the available evidence suggests the program has produced meaningful tactical gains, at the same time, there is a strong case to be made that the excessive and imprecise use of drones may also be making local populations more sympathetic to militant groups. This speaks to the need to reform the targeted killing program to minimize the “blowback” effect. As a recent high-level review of US drone policies conducted by the Stimson Center concluded,

“Even where strikes kill only legitimate targets, the perceived insult to sovereignty — in places such as Pakistan and Yemen and among fellow tribe members of the dead — sparks bitterness, feelings of nationalism or other

⁴³ New York Times, “Civilian Deaths in Drone Strikes Cited in Report” 10/22/2013, http://www.nytimes.com/2013/10/22/world/asia/civilian-deaths-in-drone-strikes-cited-in-report.html?_r=0

⁴⁴ Stanford International Human Rights and Conflict Resolution Clinic

forms of identity politics violently hostile to US military operations or Americans.”⁴⁵

It’s worth noting that this effect can also work in the opposite direction. Drone strikes have successfully “prompt[ed] local residents in Afghanistan to want Al Qaeda and other outsiders to leave their communities.”⁴⁶ Indeed, in some cases, civilians may welcome the deaths of oppressive militant leaders. As Anderson observes, it is highly questionable whether “villagers are sad to see the Taliban commander who just insisted on marrying someone’s young daughter blown up in an airstrike.”⁴⁷

Still, thousands of American strikes have yet to produce the promised results in Pakistan and Afghanistan, where the Taliban insurgency remains a vital force. Similarly, in Yemen, intensive drone operations failed to save the US-backed government or halt the rise of the Houthi rebels. On the whole, despite dispatching unknown numbers of both suspected extremists and innocent civilians in recent years, it remains unclear to what extent the US is making any real progress towards broader objectives in the war on terror. If anything, the opposite may be true. This speaks to the fact that this conflict isn’t one that can

⁴⁵ Stimson, pg. 30

⁴⁶ Congressional Research Service, “War in Afghanistan: Strategy, Operations and Issues for Congress,” March 9, 2011, pg. 53

⁴⁷ Anderson, pg. 9

be won simply by killing enough of America's adversaries and it argues in favor of a greater effort to reduce the "blow-back" effect.

Thankfully, in May 2013, President Obama announced reforms that would reduce the scale of the targeted killing program and help to ensure that it would operate in a more constrained and narrowly focused manner. And subsequently, administration officials say the total number of strikes has declined significantly.⁴⁸

However, two years later, all of the reforms have still not been fully implemented. Moreover, the disturbing cases captured by Amnesty International occurred after many these policy changes had already come into effect. Amnesty's reporting also appeared to show that the way in which the people of Northwest Pakistan perceive American drone warfare practices was unaffected by these reforms.⁴⁹

Conclusion

Several basic reforms would address these concerns, helping to minimize the negative consequences of targeted killings—impacts that critics believe make the program a strategic liability for the United States. First, the Administration should follow through on its promise to end so-called "signature strikes," attacks against individuals whom the CIA surmises to be associated with extremists

⁴⁸ New York Times, "Civilian Deaths in Drone Strikes Cited in Report"

⁴⁹ Amnesty

groups based simply on observable patterns of behavior and not on any specific intelligence. “It is ironic,” writes Michael Boyle, “that Al Qaeda’s image of the United States—as an all-seeing, irreconcilably hostile enemy who rains down bombs and death on innocent Muslims—is inadvertently reinforced by a drones policy that does not bother to ask the names of its victims.”⁵⁰ At a minimum, the United States should know whom it is targeting before unleashing hellfire missiles from the sky.

More broadly, the United States should end strikes against low-level operatives and Taliban foot soldiers. A truly surgical program focused exclusively on high-value terrorist targets would create less collateral damage and inspire less resentment amongst local populations. It would also better coincide with President Obama’s rhetoric on this issue, helping to bolster American credibility.

America’s standing would also be enhanced if the Administration moved swiftly to address the transparency concerns which have marred the program since its inception. Both domestically and internationally, the targeted killing of terror suspects is widely perceived as an arbitrary exercise of American power, unmoored from basic due process considerations and disconnected from the law. In addition, the Administration should move quickly to establish and publically explain an overriding policy framework to guide decisions about when

⁵⁰ Boyle, pg 29

and under what circumstances suspected terrorists may be targeted. This framework should also specifically spell out procedures for limiting civilian casualties.

Ultimately, to borrow Audrey Kurth Cronin's formulation, America's goal should be a targeted killing program that is capable of effectively decapitating terrorist organizations through strikes that are "legally justified, transparent and rare."⁵¹

While I have attempted to prove the effectiveness of targeted attacks against terror suspects as a tool for advancing America's interests, they are only that—a tool. Too often, Washington falls into the trap of embracing politically expedient shortcuts at the expense of real solutions. While the available evidence suggests drone strikes are a potent, low-risk tactic in the struggle with Islamic extremism, it would be a mistake to confuse them for a winning strategy. Despite the usefulness of these strikes as a means of undermining and disabling extremist groups, targeted American attacks alone will not secure a stable future for Afghanistan or Yemen, nor will they alter the global cultural and economic shifts that gave rise to Islamic fundamentalism in the first place.

Strikes driven by improved intelligence have done significant damage to America's enemies and set the stage for progress in troubled, anarchic regions from the Horn of Africa to the Arabian Peninsula to Central Asia. However, realizing these gains will require incorporating drone capabilities into a broader

⁵¹ Cronin, pg 9

strategy that employs all of the elements of American power—from conventional military strength to public diplomacy to economic aid—to effectively undermine the extremist movements that threaten America's security. The United States must also undertake a serious effort to both sensibly reform and publically explain policies, especially the targeted killing program, that are the source of such profound outrage and alienation across the Muslim world.

**Chapter II: Improving Congressional Oversight of Drone Strikes: Is a Joint
Committee on Intelligence the Solution?**

Introduction

In February 2014, Senator Carl Levin of Michigan, then-chairman of the Senate Armed Services Committee, called a classified hearing on U.S. drone strikes against suspected terrorists. The Department of Defense and the CIA each operate separate drone programs and Levin asked senior officials from both to testify, knowing full well that his request was bound to cause consternation at Langley. The CIA believes it answers only to the House and Senate Select Committees on Intelligence and has long resisted the efforts of other panels to scrutinize its activities.

Inevitably, at the last minute, the White House stepped in and refused to allow the CIA to appear before Levin's committee. The administration also balked at providing the necessary security clearances for members of the House and Senate Armed Services Committees to be briefed on the details of the CIA program. Ultimately, the hearing proceeded as planned but only military leaders testified before Levin and his colleagues. According to aides quoted anonymously, the Michigan Senator's efforts had "[run] aground on the Washington shoals of secrecy and turf..."⁵² As a result, a rare attempt to expand and intensify congressional oversight of CIA drone strikes was publically thwarted.

⁵² Ken Dilanian, "Sen. Levin's bid to boost drone oversight falters in Congress," *Los Angeles Times*, February 12, 2014

Drone warfare expert Micah Zenko of the Council on Foreign Relations has described congressional scrutiny of U.S. drone programs as “extremely poor.”⁵³ While the United Nations launched a comprehensive investigation of U.S. drone tactics last year⁵⁴—Levin’s hearing aside—congressional interest in the topic has been notably limited. As described in my first chapter, though U.S. drone strikes have proven effective at decapitating extremist groups, drone warfare’s net security value to the United States is diminished by its marked tendency to alienate the affected populations, inflaming anti-American sentiment among the very people whose hearts and minds the United States has worked so hard to win. This argues for a far more constrained, selective and transparent targeted killing program. However, given the meager role that Congress has played in overseeing CIA drone strikes thus far, it seems unlikely that lawmakers will choose to pursue these badly-needed reforms.

Inadequate oversight of drone operations is indicative of a much wider pattern of inadequate congressional monitoring of clandestine operations. Troublingly, even when Congress has taken its oversight responsibilities seriously, the CIA has responded with obfuscation or worse. Based on an investigation by the Senate Intelligence Committee, it now appears the CIA intentionally misled Congress about its controversial enhanced interrogation program, including the techniques that were employed and the value of the information that was

⁵³ Tim Starks, “Unmanned Oversight: How Congress whiffed on drones,” *New Republic*, February 7, 2013

⁵⁴ Eyder Peralta, “United Nations launches investigation into U.S. drone program,” National Public Radio, January 24, 2013

extracted using these unrelentingly severe methods.⁵⁵ Further, Senator Diane Feinstein, chair of the panel, has alleged that the CIA went so far as to spy on the congressional staffers who were conducting the inquiry.⁵⁶

Perhaps the last time this much attention was paid to the nation's intelligence community and so many questions were asked of its congressional overseers was in the wake of the September 11th attacks. Then, the national media wanted to know how a small group of terrorists with limited means had successfully evaded the attentions of federal agencies with collective budgets in the tens of billions of dollars. When the 9/11 Commission issued its final report in July 2004, it roundly criticized the effectiveness of the current oversight structure and proposed "centralizing and strengthening oversight of intelligence and homeland security issues."⁵⁷ Specifically, the Commission recommended that Congress consider the creation of a joint congressional committee, modeled on the now-defunct Joint Committee on Atomic Energy, with broad powers to oversee and reform the nation's intelligence apparatus.

In light of the critical importance of improving the conduct of American clandestine programs, including drone warfare, now would seem to be an opportune time to revisit this idea. What does the historical record tell us about

⁵⁵ Greg Miller, Adam Goldman and Ellen Nakashima, "CIA misled on interrogation program, Senate report says" *Washington Post*, March 31, 2014

⁵⁶ Patricia Zengerle, Doina Chiacu and Mark Hosenball, "CIA accused of spying on U.S. Senate intelligence committee," *Reuters.com*, March 11, 2014

⁵⁷ The National Commission on Terrorist Attacks Upon the United States, "The 9-11 Commission Report," July 22, 2004, pg. 420

the implications of establishing this kind of joint committee and would such a panel have done more to prevent the recent series of high-profile abuses by U.S. intelligence agencies?

The Joint Committee on Atomic Energy (JCAE) was exceptionally powerful and extremely effective, guiding all aspects of American nuclear policy—both civilian and military—for more than three decades. In contrast to the obstructionist tactics employed by the modern CIA, the executive branch was highly responsive to the demands of the JCAE. In fact, the Committee grew to be so powerful that it effectively became a co-decision maker alongside the executive. However, over time, this led to relationships with nuclear agencies that were seamless and overly-sympathetic. Moreover, from its inception, the Committee was not an objective overseer of nuclear programs, but rather a staunch supporter of expanding the American nuclear enterprise.

Based on this record, while the creation of a Joint Committee on Intelligence would no doubt bolster Congress' power vis-à-vis the intelligence community, it would do nothing to improve the independence or objectivity of congressional oversight. In fact, the formation of such a panel would likely have the exact opposite effect. Instead of seeking to further concentrate authority over intelligence matters, Congress should consider alternative approaches. As discussed in the conclusion, one option is to provide for greater diffusion of oversight responsibility within the legislative branch. Allowing more members

and committees to have a say in the nation's intelligence policies might marginally compromise secrecy, but it could also encourage more vigorous oversight and debate on issues of critical importance to the health of our democracy.

Constraints on Congressional Oversight

Leslie Harris of the Center for Democracy and Technology has argued that “secret law and secret oversight is an oxymoron.”⁵⁸ The imperative to keep information and debate about the nation's intelligence policies out of the public domain, she believes, renders truly effective congressional oversight nearly impossible. While that may be an extreme view, the literature does describe a range of factors that collectively constrain the strength, effectiveness and independence congressional efforts to oversee the intelligence community.

According to an analysis by the Congressional Research Service (CRS), the most significant constraint on meaningful oversight is the “high degree and pervasiveness of secrecy surrounding intelligence policy, activities, operations, resources, and personnel.”⁵⁹ These secrecy requirements severely circumscribe what information can be shared by the intelligence community and with whom. They also dictate when and under what circumstances that information can be debated by Members of Congress. Further, these requirements proscribe the extent to which the expertise of both congressional staff and non-governmental

⁵⁸ Politico, “Intelligence Oversight Has Some Limits in Congress,” October 10, 2013

⁵⁹ Halkin, Elaine and Kaiser, Frederick, “Congressional Oversight of Intelligence: Current Structure and Alternatives,” Congressional Research Service, May 2012, pg 34

actors can be leveraged to analyze classified materials and provide informed input to lawmakers. Consequently, says CRS, we are left with a “system that is too often closed to outsiders—not just the general public but also Representatives and Senators who do not have seats on the select committees on intelligence.”⁶⁰

Because of the overriding imperative to maintain secrecy at all times, congressional oversight functions differently in the intelligence context than in other policy-making realms. McCubbins and Schwartz, in one of the most widely cited models of oversight, argue that lawmakers operate much like firefighters, jumping into the fray only when things go badly wrong and outside interest groups begin clamoring for congressional action. This conception, writes Amy Zegart, may be useful in explaining patterns in other issue areas but it has little relevance to intelligence policy. She notes, for example, the almost total absence of “interest groups on the scene.”⁶¹ Moreover, as Jennifer Kibbe observes, the media, which often plays a key role in overseeing other key government functions, is severely restricted in its ability to act as a watchdog when it comes to the intelligence community.⁶²

As a result, lawmakers are less likely to be prodded into action by outside forces and less likely to have the benefit of the expertise and perspectives of outside

⁶⁰ Ibid.

⁶¹ Zegart, Amy, “The Domestic Politics of Irrational Intelligence Oversight,” *Political Science Quarterly*, Spring 2011, Issue 1, pg 8

⁶² Kibbe, Jennifer, “Congressional Oversight of Intelligence: Is the Solution Part of the Problem?” *Intelligence and National Security*, February 2010, Vol. 25, Issue 1, pg 25

groups should they choose to pursue new reforms. This means members of Congress tasked with overseeing the intelligence community face a unique set of challenges. As former Senator Lee Hamilton explained in 2007, “If you’re the chairman of a committee that works in the unclassified world, you get a lot of help: lots of reporters bring issues to your attention, trade associations write reports, citizens speak up...all kinds of things. Not so in the classified world. The world of intelligence is vast. It is closed and it is complicated.”⁶³

These obstacles are exacerbated by the meager resources available to support the members of the Intelligence Committees in exercising their oversight responsibilities. While the size and complexity of the intelligence community has grown dramatically in the decade since 9-11, the number of congressional staff assigned to the intelligence panels has failed to keep pace. Consequently, according to Allen Miller, the committees are “overtaxed and unduly burdened.” Indeed, he writes, “Staffers are vastly outnumbered—the Senate Select Committee on Intelligence has 12 staff members who review the activities of tens of thousands of agents, personnel, and programs.”⁶⁴

Regardless, many lawmakers have little appetite for the mostly thankless task of intelligence oversight. In addition to its complexity, legislative work in this area comes with grave responsibilities and few tangible benefits. According to Miller, considerable effort is required to gain mastery of the subject material and this

⁶³ Zegart, 8

⁶⁴ Miller, Allen, “Understanding Legislative Oversight of the CIA,” *American Intelligence Journal*, March 2012, Vol. 30, Issue 1, pg 125

effort generally yields little in the way of headline-grabbing benefits for constituents back home.⁶⁵ “No member ever gets a bridge built or a road paved by serving on the intelligence committee,” quipped former CIA Director Michael V. Hayden, “It’s an act of patriotism.”⁶⁶

Members also serve for relatively short periods of time on the two intelligence panels. While the Senate abolished term-limits in 2005, with the exception of the Chair and Ranking Member, the House continues to block members from serving more than four terms on its intelligence committee. As a result, members are relatively less experienced and arguably less prepared to effectively carry out their oversight responsibilities on this panel than on others in Congress.

Zegart notes that between 1975 and 2008, lawmakers who had served more than a decade in Congress represented 32 percent and 23 percent, respectively, of the members of the Senate Banking and Armed Services Committees. The comparable figure for the Intelligence Committee was only 15 percent. She contends that term-limits have effectively served to diminish the ability of members to gain critical “on-the-job training” in intelligence issues.⁶⁷

Other institutional barriers continue to hamper effective oversight. For example, when they face stubborn opposition from the Intelligence Committees, the intelligence agencies can sometimes go to the House and Senate Defense

⁶⁵ Miller, 126

⁶⁶ Zegart, 15

⁶⁷ Ibid, 15-16

Appropriations Subcommittees to get what they want. Hamilton recalled that the House Intelligence Committee was frequently bypassed in this manner in the mid-1980's.

While other authorizing committees may face similar challenges, this problem is especially acute for the Intelligence Committees because secrecy requirements inhibit effective coordination with the House and Senate appropriators. As Zegart observes, "In the classified world...it's much harder for one committee to know or object to what another committee is doing." As a result, it's relatively easy for the CIA to "get away with gaming the system."⁶⁸

It's worth noting that the House and Senate Defense Appropriations Subcommittees are even less equipped to perform effective oversight of the intelligence community than the authorizing panels. According to Kibbe, with so many high-profile, expensive programs under their jurisdiction, defense appropriators have limited resources to devote to querying intelligence programs and the intelligence community's funding requests therefore receive relatively little scrutiny.⁶⁹ As former Senator Kit Bond frankly admitted, "The Appropriations Committee can't give intelligence the attention it deserves."⁷⁰

Oversight is further impeded by the flawed "Gang of Eight" process for making the legislative branch aware of certain covert activities. Under "extraordinary

⁶⁸ Ibid, 19-20

⁶⁹ Kibbe, 30

⁷⁰ Ibid, 32

circumstances” the President may brief the leadership of both chambers as well as the chairs and ranking members of the Intelligence Committees in order to fulfill his legal responsibility to keep Congress “fully and currently informed” of such operations. However, as Kibbe notes, no staff are permitted to attend these briefings and members are even prohibited from taking notes. Further, the individual Senators and Representatives who comprise this select group may be briefed at different times, preventing them from discussing the relevant facts as they are presented. In addition, they are barred from sharing what they learn during these sessions with their colleagues, including other members of the Intelligence Committees.

Perhaps most importantly, according to Kibbe, it is unclear what recourse congressional leaders would have if they objected to a particular covert action or program described during a “Gang of Eight” briefing. They obviously couldn’t hold a press conference to voice their concerns. More troublingly, in such a scenario, they would even face significant obstacles in attempting to exercise Congress’ traditional power of the purse. As Kibbe explains, “It is difficult to cut off funding for a program when you cannot describe the risks that you feel it presents.”⁷¹

While the “Gang of Eight” process is thankfully used only sparingly, according to the literature, Members of Congress also encounter barriers even in their more mundane oversight efforts. For example, committee attempts to obtain general

⁷¹ Ibid, 37

information about classified programs are routinely thwarted by the intelligence community and the CIA and other agencies regularly fail to produce reports required by Congress. In addition, as the Guardian has reported, questions posed by individual members who are not on the panel are rarely entertained at all.⁷² Further, briefings provided by the intelligence agencies to the committees on covert programs and operations are often woefully inadequate. Kibbe quotes former Senate Intelligence Committee chairman Jay Rockefeller who describes those he received as “superficial” and “inconsequential.”

For all that, the most basic factor limiting effective oversight may lie with the members of Congress themselves. The available evidence, including the most recent scandals which have engulfed the intelligence establishment, strongly indicated that the leaders of the Intelligence Committees are too close to the agencies they are charged with overseeing. Instead of scrutiny and skepticism, the committee chairs and ranking members too often offer only unquestioning support to America’s intelligence agencies. Moreover, as Miller writes, some members actually believe vigorous oversight will weaken the nation’s intelligence capabilities. “....many members of the House and Senate...believe that Congressional micromanagement could prevent the CIA from reaching its full potential and impede intelligence operations if oversight went too far.” According to Miller, when it comes to the CIA, “Congress does not want to do anything to

⁷² Greenwald, Glen, “Members of Congress denied access to basic information about NSA,” The Guardian, August 4, 2013

threaten its stability or its ability to command respect.”⁷³ This attitude has produced apathy and indifference where—as in monitoring of NSA surveillance programs—vigilance and careful attention to detail were badly needed.

In summary, weak and ineffectual oversight of the intelligence community by a Congress is the result of a range of factors. Secrecy requirements prevent open debate and inhibit effective collaboration between Members and committees.⁷⁴ There are also limited incentives for Members to devote time and energy to their work on the intelligence panels as this service does little to enhance their reputations and delivers few tangible benefits to their constituents. In addition, committees lack sufficient staff resources in light of the sprawling size of the intelligence establishment. Further, unlike education, taxation, defense or any number of other areas of policy, few outside interest groups bring issues and concerns to the Members’ attention regarding the nation’s intelligence programs.⁷⁵ But perhaps most importantly, poor oversight is a consequence of the fact that too many members of the select committees on intelligence are overly sympathetic or unduly deferential to the agencies they have a constitutionally-mandated responsibility to oversee.

The 9-11 Commission and the Joint Committee on Atomic Energy

⁷³ Miller, 127

⁷⁴ “Congressional Oversight of Intelligence: Current Structure and Alternatives,” Congressional Research Service, May 2012, pg 34

⁷⁴ Ibid.

⁷⁵ Zegart, Amy, “The Domestic Politics of Irrational Intelligence Oversight,” Political Science Quarterly, Spring 2011, Issue 1, pg 8

In seeking to rectify the shortcomings that allowed the September 11th hijackers to evade American intelligence, the 9-11 Commission recognized the importance of improving congressional oversight. Without strong oversight, the Commission reasoned, other efforts to enhance the management and coordination of intelligence activities would inevitably be undermined.

The Commission offered a damning verdict on Congress' approach to intelligence matters, arguing that the House and Senate intelligence committees "lack the power, influence and sustained capabilities"⁷⁶ needed to guide the intelligence community through the challenges it would face in the post-9/11 world. Among other options, it recommended that Congress consider the formation of a joint committee, cast in the mold of the Joint Committee on Atomic Energy, which would empower "a relative small group of members of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for its work."⁷⁷

Given the fact that the 9-11 Commission specifically cited the Joint Committee on Atomic Energy, it's worth examining the record the JCAE accumulated over the course of more than three decades to determine whether this model would, in fact, offer an antidote to the problems currently plaguing congressional oversight of intelligence. Despite concerning itself with a seemingly unrelated set of issues

⁷⁶ 9-11 Commission, pg. 420

⁷⁷ Ibid

and programs, there are strong parallels between the JCAE and the modern intelligence committees. For example, like the intelligence panels, the JCAE had jurisdiction over a number of highly classified programs, and was therefore forced to contend with comparable secrecy restrictions.⁷⁸ It also operated at a time when the issues under its jurisdiction were the subject of great public interest and scrutiny. Moreover, just as in the post-9/11 context, the Committee was situated in a political environment immeasurably influenced by the threats the nation faced at the time, specifically from a Soviet Union that appeared menacing and militarily formidable.

Key to evaluating the 9-11 Commission's recommendation is assessing the JCAE's power, effectiveness and independence. Was it capable of compelling the Executive to acquiesce to its requests for information and other demands? Could it effectively pursue its policy goals? And was the JCAE objective and impartial in guiding the American nuclear enterprise? Answering these questions will help to shed new light on how a panel shaped in the JCAE's image—a potential Joint Committee on Intelligence—would likely operate and whether it would succeed in enhancing congressional oversight of the intelligence community.

The Joint Committee on Atomic Energy was an entirely unique entity—a panel without peer in contemporary American history. In 1962, Green and Rosenthal,

⁷⁸ Harold P. Green and Alan Rosenthal, *Government of the Atom: The Integration of Powers*, Atherton Press, New York, 1963, pg 204

the Committee's preeminent chroniclers, summed up the JCAE thusly, "...in terms of its sustained influence within the Congress, its impact and influence on the executive branch, and its accomplishments, [it is] probably the most powerful congressional committee in the history of the nation."⁷⁹ The Committee was armed with extraordinary powers, wielded unparalleled influence over its exclusive jurisdictional territory and, in time, grew to become a "kind of quasi-administrative legislative agency" that played an unprecedented role in the decisions made at the agencies it oversaw.⁸⁰

To a large extent, this uniqueness was the product of the unusual circumstances of the Committee's birth. The JCAE was formed as a counterweight to the Atomic Energy Commission, a body whose mission was to, "foster and control the peacetime development of atomic science and technology," effectively governing all civilian and military nuclear programs in the United States.⁸¹ In order to oversee such an inherently powerful executive agency, Congress felt compelled to establish a Committee with a unique structure and extraordinary powers of its own.

Like the current select committees, members of the JCAE were appointed by the Speaker Pro Tempore of the Senate and by the Speaker of the House. They tended to be have significant seniority and were often drawn from the Foreign

⁷⁹ Harold P. Green and Alan Rosenthal, "Fusion of Government Power," *Bulletin of Atomic Scientists*, June 1962, pg. 12

⁸⁰ Ibid, pg 16

⁸¹ Alice L. Buck, "A History of the Atomic Energy Commission," U.S. Department of Energy, July 1983

Affairs and Armed Services Committees. Beginning in 1951, by rule, three of the Senate members of the JCAE were required to also hold positions on the Appropriations Committee. (The House declined to institute a similar arrangement.) Unlike the intelligence committees, the JCAE never imposed term limits and members who joined the panel were not required to give up one of their other committee assignments. Consequently, part of the attraction for would-be members was that the JCAE was essentially a bonus or “extra committee.”⁸² The result of these factors was that the Committee came to be populated by many of the most powerful, longest tenured members of Congress—men of great stature within the institution. They were “statesmen” and “old hands in Congress...accustomed to its traditions and mores.”⁸³ Their collective clout added immeasurably to the JCAE’s power.

The Committee’s influence was also strengthened by the unique legislative procedures under which it operated. After the JCAE debated and approved legislation, identical reports were sent to both chambers. Once these bills reached the floor, other members of Congress typically deferred to the JCAE, given the technical complexity and secrecy of nuclear matters.⁸⁴ In those cases where the House and Senate ultimately produced different versions of the same bill, the JCAE would then serve as its own conference committee for the purposes of reaching consensus on the legislation. Thus, at every stage of the

⁸² Christopher M. Davis, “9/11 Commission Recommendations: Joint Committee on Atomic Energy – A Model for Congressional Oversight,” Congressional Research Service, October 2004, pg 13

⁸³ Ibid, pg 10

⁸⁴ Harold P. Green and Alan Rosenthal, *Government of the Atom*, pg 78

legislative process—from inception through to final passage—the Committee’s members wielded significant power over all aspects of legislation that dealt with nuclear energy.

Unfortunately, this structure had the effect of curtailing meaningful debate and served to limit the policy alternatives available to Congress as a whole.

Members outside of the Committee were essentially presented with a fait accompli – bills almost certain to become law. According to Green and Rosenthal, writing in 1963, “On atomic energy legislation...the JCAE is the court of first and, probably, last appeal.”⁸⁵

However, even more significant than its strength within the legislative branch was the control the JCAE exerted over the agencies it oversaw. In fact, thanks to legislation passed in 1954, the entire executive branch was required to turn over any and all information requested by the Committee regarding activities that were related to the field of atomic energy. And unlike the intelligence committees, which have long complained about the intelligence community’s reluctance to adhere to the panels’ requests for information, the JCAE achieved a notable degree of compliance with its oversight demands.⁸⁶

In addition to its expansive ability to acquire information, the Committee was also granted the authority under the Atomic Energy Act to utilize the resources of the

⁸⁵ Ibid, pg 127

⁸⁶ Green and Rosenthal, *Government of the Atom*, pg 89

agencies it oversaw for its own purposes.⁸⁷ Though it rarely happened in practice, the JCAE was thus legally empowered to order executive branch personnel to investigate their own organizations on behalf of the Committee. According to critics, “this had the effect of blurring the line between the JCAE and the executive agency it was tasked with overseeing, making the panel, in essence, a ‘legislative-administrative hybrid’...”⁸⁸

The Committee could also review executive branch actions not just after the fact, as almost every other committee typically does, but while they were in the process of being considered as well.⁸⁹ This gave the JCAE the ability to essentially veto decisions it found objectionable. “In this regard,” a Congressional Research Service analysis found, “the JCAE often acted as a co-decision maker with the Executive, not simply an observer of actions or decision that had already occurred.”⁹⁰ As a result, the Atomic Energy Commission, which the Committee had originally been established to oversee, became less an independent board dictating national nuclear policy with input from Congress and more a subordinate body operating under the direction of the JCAE.

The fact that the Committee came to influence policy not just through the passage of legislation but by playing a direct role in agency decision-making contributed to the development of unusual relationships between the Committee

⁸⁷ Ibid, pg 78

⁸⁸ Davis, 14-15

⁸⁹ Green and Rosenthal, *Government of the Atom*, pg 268

⁹⁰ Davis, 19

and the agencies it oversaw. These arrangements, especially with the Atomic Energy Commission and the Pentagon, were so close that they became virtually “seamless.”⁹¹ Influence also flowed in the opposite direction. For example, it was reported at the time that a Navy Admiral – Hyman G. Hickover – held inappropriate sway over the committee on issues related to nuclear-powered ships and submarines.⁹²

These relationships were abetted by the fact that the Committee was rarely skeptical of nuclear power. Instead, the panel was collectively and enthusiastically committed to advancing the role of nuclear energy in the American economy and in the nation’s armed forces. This mission was the animating force that drove much of the Committee’s work over its three decades of existence. However, the same dynamic would prove to be the panel’s undoing. When nuclear power fell out of favor among liberals in the 1970’s, they quickly turned on the Committee, accusing the panel of being in the pocket of the nuclear lobby and of concerning itself only with the unquestioning expansion of nuclear power. Finally, in August 1977, under pressure from rank-and-file Democrats, the House and Senate leadership decided to abolish the Committee.⁹³

Is a Joint Committee on Intelligence the Answer?

⁹¹ Davis, 20

⁹² Ibid, 20

⁹³ Ibid, 23

The JCAE was shaped by the congressional leaders who guided the panel and by the specific circumstances in which it arose. In many respects, the Committee was the product of a unique era in American history – a time when the Cold War was at its height and before Three Mile Island and Chernobyl irrevocably altered the public's view of nuclear power. Yet, despite its distinctiveness, the story of the JCAE still can help to shed light on how structural factors impact the quality of congressional oversight, enabling us to better assess the potential implications of replacing the current select committees with a single Joint Committee on Intelligence.

Returning the questions posed at the outset, based on the historical record, was the Committee powerful, effective and independent? And would a joint intelligence committee modeled on the JCAE provide stronger, more effective and more independent oversight of the intelligence community than the current structure in Congress has permitted?

As described above, the JCAE certainly wielded great strength and was exceptionally successful, both legislatively and through other means, in pursuing a policy agenda of nuclear expansion. However, the Committee was far from independent or objective. And this finding, perhaps more than any other consideration, should give us pause in considering the appropriateness of the joint committee model for the task of intelligence oversight, including oversight of drone operations.

Beginning with the question of clout, the creation of a joint committee would almost certainly help to redress the balance of power between Congress and the executive. First, thanks in part to the fact that it was a joint committee, the JCAE was highly prestigious and counted among its members some of the most formidable figures in Congress, including a future President in Lyndon B. Johnson. (As described above, membership was made especially attractive by the fact that members who joined the JCAE were not required to give up one of their other committee slots.) A Joint Committee on Intelligence, like the JCAE, would likely draw from the foremost members of the current Intelligence, Armed Services, and Foreign Affairs Committees. Membership would presumably be more esteemed and attractive than a place on the current select committees on intelligence. It would thus encourage members to take an active role on the panel and to devote more of their scarce time and energy to the generally thankless task of intelligence oversight.

A committee with such a formidable membership might also encourage greater compliance with requests for information. The JCAE, in part because of the close relationships it fostered with the Executive, was highly successful in compelling agencies to meet its oversight demands. Moreover, under a Joint Committee on Intelligence, the intelligence community would receive a single set of requests from a single, powerful committee, making these requests much harder to reject or ignore.

Next, on the issue of effectiveness, the staff resources to both generate inquiries and analyze agency responses would also likely be enhanced with the creation of a joint committee. The JCAE had a substantially larger staff than most other contemporary committees⁹⁴ and the formation of a new intelligence panel would give Congress the opportunity to examine the need for additional staff at a time when the intelligence community has never been larger or better funded.

Furthermore, merging the staffs of the current intelligence panels would allow Congress to eliminate redundancies and concentrate staff resources, potentially strengthening the legislation branch's oversight capabilities.

All of this speaks to another crucial benefit that a joint committee would provide Congress – improved coordination. The secrecy requirements inherent in intelligence oversight prevent open debate and inhibit effective collaboration between Members and committees. The creation of a single committee with jurisdiction over the entire intelligence community would make it far easier for congressional decision-makers to confer with one another, share new proposals, debate contentious issues and provide unified guidance to intelligence agencies. This structure would also make it harder for executive branch leaders to bypass or ignore certain committees to get what they want. Ultimately, where unanimity existed among its members, the formation of a joint committee would enable Congress to speak to the Intelligence Community with one voice.

⁹⁴ Davis, 12

These benefits are significant and they would help to both address the intelligence community's intransigence in the face of congressional demands for information and provide improved coordination, resources and institutional attention to intelligence oversight. However, it seems highly unlikely that a Joint Committee would have pursued the reforms necessary to reduce civilian casualties from drone strikes or address NSA overreach. What's lacking—just as in the example of the JCAE—is true independence. Indeed, congressional indifference to these abuses is more a product of the strong inclination of the leaders of the intelligence panels to support the policies and perspectives of the intelligence community than the result of any other deficiency in the way Congress approaches the task of oversight.

The current state of congressional oversight of intelligence is a direct manifestation of what the former clerk of the House Oversight and Government Reform Committee, Larry Halloran, has termed “congressional Stockholm syndrome”—the tendency of members of Congress and their staffs to, over time, adopt the views of the agencies they are charged with overseeing.⁹⁵ And based on the example of the JCAE, greater concentration of oversight responsibilities would do little to disrupt this corrosive phenomenon.

The JCAE was marked by a blurring of the lines between the branches of government and by the close relationships the committee maintained with

⁹⁵ Larry Halloran, remarks at Johns Hopkins University, “Congressional Power and Oversight,” March 31, 2014

Administration officials. As described above, the Committee came to play an active role in the decision-making process of the executive branch on nuclear matters—not just reviewing actions after the fact, but directing agency leaders on key policy questions. Because of these close relationships, certain figures in the Administration also grew to wield undue sway over the committee’s members, seriously compromising their independence. Perhaps most significantly, the JCAE never served as a detached, dispassionate observer of nuclear matters. Instead, over the course of its history, the Committee aggressively pursued an agenda of nuclear growth and proliferation.

This is precisely the dynamic that Congress should be seeking to curtail—not encourage—in the oversight of the intelligence community. Instead of fostering closer, more sympathetic relationships with the intelligence community, Congress should work to reestablish its independence and once again become a thorough scrutinizer, not just an unthinking enabler, of the CIA and the other intelligence agencies. Unfortunately, reducing the number of members of Congress with a say in intelligence matters would do nothing to further this goal. If anything, it would make the “syndrome” Halloran described more likely.

Based on the JCAE’s record, there’s a strong chance that the membership of a Joint Committee on Intelligence would gradually adopt an even more sympathetic—possibly even sycophantic—view of the intelligence community than the current select committees already have. Further, it’s entirely possible

that the committee could adopt as its mission the promotion of the powers of the intelligence agencies, just as the JCAE sought to promote the power of the Atomic Energy Commission, which could have a range of serious negative consequences, especially for American civil liberties. And troublingly, were a new Joint Committee on Intelligence to implement the same legislative procedures as the JCAE, there would be fewer opportunities for other members of Congress to meaningfully object.

Conclusion: Congress Should Consider Other Options to Improve Intelligence Oversight

Recent scandals have once again called into question the adequacy of congressional oversight of the intelligence community. The legislative branch's efforts in this area are hamstrung by a series of structural barriers, including: secrecy requirements that prevent open debate; limited incentives for Members to devote time and energy to their work on the intelligence panels; and the inability of outside interest groups to participate in the policy-making process. More significantly, the intelligence committees have arguably become overly sympathetic to the perspectives of the agencies they oversee and have therefore failed to appropriately scrutinize the executive branch's intelligence policies.

Among the most prominent proposals to address these shortcomings—and one that was endorsed by the 9-11 Commission—is the creation of a Joint Committee on Intelligence modeled on the Joint Committee on Nuclear Energy. Based on

the JCAE's record, while such a committee would strengthen Congress' hand relative to the executive, it would do nothing to enhance the independence of congressional oversight of intelligence and would probably have the opposite effect. Moreover, it's highly questionable whether a joint committee would be any more likely to query the collateral damage caused by American drones or the manifold other deficiencies inherent in American targeted killing policies.

Congress would be wise to consider alternative approaches to this challenge. Larry Halloran has argued that effective oversight rarely emanates from a single source and is often the product of multiple committees pursuing distinct goals and agendas.⁹⁶ Congressional leaders and academics should therefore examine whether a greater diffusion of oversight responsibility within the legislative branch would help to produce stronger results.

For a start, lawmakers like Senator Levin who have sought to review the nation's drone policies from the vantage point of other committees should be encouraged instead of stonewalled. While this proposal might raise the potential for more unauthorized leaks of sensitive information, it could also help to meet the critical need for more robust, independent, objective and multifaceted oversight of the intelligence community—something the House and Senate intelligence committees have manifestly failed to deliver.

⁹⁶ Halloran

**Chapter III – Hostile Take-Over: Should the U.S. Military Assume
Command of America's Drone Wars?**

Introduction

In 2013, President Obama proposed granting sole control of drone operations to the Department of Defense—a move that would strip the CIA of the key role it has played in this domain over the past decade. To date, this momentous reform still has yet to be implemented. However, if it does eventually come to pass, such a significant transfer of responsibility could have far-reaching ramifications for not for just *who* controls American drone operations but for *how* they are conducted.

In this chapter, I review a recent strike which has served to reignite debate over the President's proposal and examine the political factors which have prevented his vision from being achieved. I then weigh the competing arguments for and against military control of drone operations and conclude that this consolidation would likely improve the transparency of drone operations but that other benefits will only be realized if this transformative action can be leveraged to produce other much-needed improvements in the conduct of American drone warfare.

A drone strike gone wrong revives hopes for reform

In April, the Obama administration announced to reporters that two Al Qaeda hostages held in Pakistan—aid workers Warren Weinstein of the United States and Giovanni Lo Porto of Italy—had died four months prior. They perished, the White House disclosed, not at the hands of their captors but instead when

missiles fired from an American drone hovering thousands of feet overhead obliterated the terrorists' compound.

Despite hundreds of hours of surveillance, U.S. officials had been completely unaware that the two men were imprisoned in a building that the CIA had earmarked for destruction. In fact, it had taken weeks for intelligence analysts to piece together the clues necessary to determine that an American strike had ended the lives of two men U.S. intelligence was desperate to locate.⁹⁷ Perhaps surprisingly, it also emerged that Weinstein had not been the only American to die in the explosion. Again unbeknownst to the CIA, a U.S. citizen named Ahmed Farouq who had risen to become the deputy head of Al Qaeda's operations in India also met an untimely end in the strike.⁹⁸

On a personal level, the incident anguished President Obama who, after telephoning Weinstein's widow, reportedly told aides that it marked one of the low points of his time in office. The strike also served to reignite public debate over the President's policies regarding the use of drones against suspected terrorists. For critics, it was galling that the CIA had decided to destroy a building and kill all of its occupants without clear knowledge of who was inside.

⁹⁷ New York Times, "Obama Apologizes After Drone Kills American and Italian Held by Al Qaeda," April 23, 2015
http://www.nytimes.com/2015/04/24/world/asia/2-qaeda-hostages-were-accidentally-killed-in-us-raid-white-house-says.html?_r=0

⁹⁸ Washington Post, "Obama apologizes for attack that killed two hostages," April 23, 2015
https://www.washingtonpost.com/world/national-security/us-operation-kills-al-qaeda-hostages-including-american/2015/04/23/8e9fcaba-e9bd-11e4-aae1-d642717d8afa_story.html

Opponents of U.S. drone strikes also took the Obama administration to task for eliminating Farouq—an American citizen—without any semblance of due process. (Obama officials subsequently responded that they were unaware of the Qaeda operative’s citizenship status at the time the strike was authorized.)⁹⁹

More broadly, this attack arguably bears the hallmarks of the shortcomings identified in Chapter I. The fact that it took the Administration months to uncover the truth of what had transpired—and longer still to reveal what they had found to the American public—speaks to the unnecessary and corrosive layers of secrecy that surround the CIA drone program. In addition, the fact that a strike was authorized when so little was apparently known about the building being targeted is indicative of a lack of selectivity which has long characterized American use of armed drones against suspected extremists. As described in previous chapters, this failure to exercise sufficient caution and discretion in authorizing drone strikes has alienated local populations and served to undermine the pursuit of broader U.S. objectives in the struggle against Islamic extremism. Put another way, as a result of poor policies and questionable decision-making, drone strikes have too often produced tactical gains at the expense of progress towards American strategic aims in this conflict.

Interestingly, criticism of this unfortunate incident and of the Obama administration’s approach to drone warfare in general has revived a key reform proposed by President Obama himself—one that has been blocked by Congress

⁹⁹ Ibid

and an uncooperative intelligence establishment. More than two years ago, the President called for transferring full control of drone operations from the CIA to the Department of Defense, which operates its own parallel drone program. This idea, though widely touted at the time, was not entirely novel. Even before the advent of America's targeted killing program, the 9/11 Commission recommended that responsibility for all covert military operations should shift to the Defense Department."¹⁰⁰

However, despite some initial momentum and continuing support from prominent members of both political parties, the move had apparently stalled until recently. Ensnared in the squabbling between rival bureaucracies, it seemed likely that the targeted killing of terror suspects would remain a prerogative of the intelligence agency for some time to come. However, following the deaths of Weinstein and Lo Porto, it appears this reform has gained renewed traction, at least in the media and in Congress, if not in the intelligence community.

In his remarks after announcing the botched strike, President Obama averred that, "...one of the things that sets America apart from many other nations, one of the things that makes us exceptional, is our willingness to confront squarely our imperfections and to learn from our mistakes."¹⁰¹ But what is the right lesson to take from this tragic event? Among other steps, should the hostages' deaths finally compel the U.S. government to adopt the President's proposal and remove

¹⁰⁰ The National Commission on Terrorist Attacks Upon the United States, "The 9-11 Commission Report," July 22, 2004, pg. 415

¹⁰¹ Washington Post, Ibid

responsibility for drone strikes from the CIA's purview? Would this single reform be enough to meaningfully address the deficiencies described in Chapter I?

While there are a number of complicated and sometimes contradictory factors to consider, on balance, the answer is probably 'yes.' However, any improvements in the performance of U.S. drone programs will almost certainly not be achieved through this shift alone. Instead, they will be realized only if the handover of responsibility to DOD serves as a catalyst for—and is implemented in concert with—other long-overdue and badly-needed reforms.

The politics of drone reform

The United States operates two independent drone programs—one run by the CIA and the other by the U.S. military's Joint Special Operations Command (JSOC). While the unmanned aerial vehicles (UAV's)¹⁰² that America's spies and its uniformed commanders fly are largely the same and possess nearly identical capabilities, where and how these drones are used is distinctly different. The military program is largely confined to the airspace above the traditional battlefield—primarily over Iraq, Afghanistan and Libya. DOD drones also fly missions over countries whose governments have acquiesced to their presence, such as Yemen (at least until recently), as well as over Somalia, which doesn't

¹⁰² Also increasingly referred to as Remotely Piloted Aircraft (RPA), especially by the U.S. Air Force

have a functioning government and therefore cannot object to American missile strikes against its citizens.¹⁰³

In contrast, the CIA program operates over states that have either expressly denied the use of their airspace for American military operations or—more commonly—are keen to rid themselves of extremist elements but have found the deniability afforded by the covert CIA program to be politically expedient. The most notable country in this category is Pakistan. Not long after the U.S. –led invasion of Afghanistan, the Pakistani government quietly negotiated a pact that allowed the CIA to conduct drone strikes in the country’s lawless northern tribal areas. Per the agreement, these attacks on Taliban forces would go unattributed and the U.S. government would deny all responsibility for any casualties at the hands of American drone operators situated thousands of miles away. To date, this arrangement has proven mutually beneficial. American strikes have killed hundreds of extremists while Pakistani authorities have faced relatively little political blowback despite the collateral damage inflicted by these attacks and in spite of the clear infringement of the country’s sovereignty that American drones operating overhead would seem to represent.¹⁰⁴

These disparities between the DOD and CIA programs are rooted in differences in the legal frameworks that authorize the two organizations. Like all other military operations, the Department of Defense’s drone activities are directed by

¹⁰³ Sterio, Milena, “The covert use of drones: How secrecy undermines oversight and accountability,” Albany Government Law Review, Vol. 8, February 5, 2015, pg. 132

¹⁰⁴ Daniel Byman, “Why Drones Work,” Foreign Affairs, July/August 2013, Vol. 92. Issue 4, pg 2

Title 10 of the United States code. The DOD program, in sharp contrast to its CIA counterpart, also operates according to publically available military doctrine. Specifically, Joint Publication 3-60 outlines “steps in the joint targeting cycle,” explaining in detail how and under what circumstances drone strikes are to be launched against suspected enemies of the United States.¹⁰⁵ In contrast, the activities of UAV’s operated by the CIA fall under Title 50, which defines what constitutes “covert actions” and severely limits public disclosures about these operations.¹⁰⁶ As a result—and by design—much less is known about the procedures that govern targeted killings conducted by the CIA.

The purposeful, consuming secrecy that defines CIA drone operations has attracted sharp criticism since drone strikes ramped up in the early 2000’s. Indeed, for years, the U.S. government refused to even acknowledge the program’s existence and has only reluctantly begun to disclose the policy parameters and legal strictures within which it operates.¹⁰⁷ This led prominent critics—among them Micah Zenko of the Council on Foreign Relations, Rachel Stohl of the Stimson Center and Congressman Adam Schiff (D-CA), now the Ranking Member on the House Select Committee on Intelligence—to argue that shifting responsibility for drone warfare from the shadowy realm of the CIA to the “relative sunlight” of DOD was urgently needed to increase transparency¹⁰⁸.

¹⁰⁵ Zenko, Micah, “Transferring CIA Drone Strikes to the Pentagon,” Policy Innovation Memorandum No. 31, Council on Foreign Relations, pg 1-2

¹⁰⁶ Ibid

¹⁰⁷ Stanford International Human Rights and Conflict Resolution Clinic, pg. 12

¹⁰⁸ Gordon Lubold and Shane Harris, “The CIA , Not the Pentagon, Will Keep Running Obama’s Drone War,” Foreign Policy, November 6, 2013,

To his credit, after a lengthy period of contemplation, President Obama eventually reached the same conclusion. In a closely watched 2013 speech at the National Defense University, he signaled his support for granting sole ownership of the targeted killing program to the Department of Defense. This change does not require the passage of new legislation by a recalcitrant Congress and could presumably be implemented by the Commander in Chief with the mere stroke of a pen. Yet, in a sign both of the limits of the President's power—even within his own administration—and of the strength of the opposition that the proposal faces, two years have passed and the CIA's role in U.S. drone warfare operations remains undiminished.

One of the most frequently-cited reasons for the lack of progress towards the President's preferred policy is an amendment reportedly attached to a classified annex of the Senate version of last year's Defense Appropriations Act by Senator Diane Feinstein (D-CA). Though her office has declined to comment, press reports indicate that the measure inserted into the spending bill by the former Chairwoman of the Senate Select Committee on Intelligence prevents the transfer of authority over drone operations to DOD unless the Secretary of Defense certifies that this change will not adversely affect the war of terror.¹⁰⁹ While this certification requirement may not seem like an insurmountable barrier,

http://complex.foreignpolicy.com/posts/2013/11/05/cia_pentagon_drone_war_control#sthash.fWORM8Fo.dpbs

¹⁰⁹ Politico.com, "Dianne Feinstein helped keep drones with CIA," April 23, 2015

<http://www.politico.com/story/2015/04/drone-strikes-cia-pentagon-war-defense-117294.html>

to date it has apparently served to prevent President Obama from implementing a reform he promised more than two years ago.

To some extent, this lack of progress—like so many things in Washington—is more about power than about the merits of the policy in question. Feinstein may sincerely believe that the CIA is better equipped to handle the targeted killing mission than the U.S. military. However, as a rule, congressional committees jealously guard their turf and it is certainly possible that California’s senior senator has championed the CIA’s role in drone operations in part because she is loath to see such a critical instrument of American force projection slip from the Intelligence panel’s exclusive jurisdiction.

By the same token, John McCain has taken the fairly unusual step for him of publically endorsing President Obama’s position on an issue of national security, arguing for a greater role for the Department of Defense in drone operations.¹¹⁰ Unstated is the fact that as chairman of the Senate Armed Services Committee (SASC), such a shift in policy would have the effect of expanding the sphere of McCain’s power and influence. As described in Chapter 2, the CIA has strongly resisted attempts by the two Armed Services Committees to exercise any meaningful oversight over the agency’s drone operations, going so far as to

¹¹⁰ Defense News, “McCain Vows New Fight Over Control of US Armed Drone Program,” February 19, 2014
www.defensenews.com/article/20140219/DEFREG02/302190025/McCain-Vows-New-Fight-Over-Control-US-Armed-Drone-Program

refuse to testify at a 2014 SASC hearing when Senator Carl Levin (D-MI) chaired the panel.

Of course, the CIA has far more to lose in this fight than any Senator or Congressman. The agency has spent untold sums developing the capability to target and kill suspected terrorists anywhere across huge swaths of the globe. Accordingly, in a development that may be without precedent in American history, the CIA has armed itself for this purpose, acquiring a fleet of sophisticated unmanned aircraft to carry out this challenging mission. And it's a mission that the agency and its supporters, including Senator Feinstein, claim that it executes with unrivaled efficiency and precision. In the absence of any reporting about the bureaucratic maneuvering that doubtless followed the President's 2013 speech, it seems safe to assume that the CIA has strenuously objected to any and all efforts to strip away a drone program it obviously holds dear.

It is also entirely possible that the transfer of authority to DOD has been thwarted not in spite of the President's efforts but because he failed to follow through on the public commitment he made in 2013. If President Obama were willing to expend the necessary political capital on this issue, it seems possible that the policy he envisioned could have been implemented by now.

In theory at least, the President has the legal authority to overcome the forces of institutional inertia and inter-agency politics to reshape American drone programs to fit his vision. Even the legal stumbling block that Senator Feinstein's amendment presents hardly appears insurmountable.

It's illustrative to consider the boldness with which President Obama has pursued other objectives in his second term, even in the face of robust political opposition. For example, the President has already used his executive authority to achieve his aims in policy areas from immigration reform to the minimum wage to reestablishing relations with Cuba. In light of Obama's ambition, aggressiveness and apparently willingness to "go it alone" on these fronts, one is left with the distinct impression that the absence of meaningful progress in migrating drone operations to DOD results more from a lack of political will on the part of the President than from the stubbornness of any bureaucratic or structural barrier.

The fiction of deniability

As we have seen, the political environment since 2013 has not been conducive to transitioning exclusive responsibility for U.S. drone strikes to the Department of Defense. However, there is a sense among some prominent observers that this major reform could be revived following the tragic deaths of Weinstein and Lo Porto in January. But perhaps more important than asking if this change will happen, is the question of whether it's actually a good idea. Put another way,

would granting DOD a significantly greater role in the targeted killing of suspected terrorists be in the national security interest of the United States?

As described in Chapter I, the overwhelming secrecy of American drone programs has undermined U.S. strategy in the war on terrorism. First, the Administration's decision to shroud the program in secrecy has allowed conspiracy theories to multiply across the Muslim world and "made it harder to refute claims of massive civilian deaths."¹¹¹ In addition, when the US has succeeded in killing notorious terrorist leaders guilty of murdering large numbers of Pakistanis, the Administration's insistence on non-disclosure has prevented the United States from taking any of the credit. Just as importantly, the Administration's failure to communicate the basic facts of the program and explain the Administration's decision-making process is directly contributing to the overwhelmingly negative perception of the United States in public opinion polls in most Muslim countries.¹¹²

The needless secrecy of U.S. drone operations has compromised the effectiveness of America's costly efforts to convince local populations to turn away from violent extremism. The potential benefits of working to reduce civilian casualties are limited when the U.S. is prevented from telling the truth about the outcomes of its drone operations. As Captain Joseph Chapa of the U.S. Air Force has argued, "...the federal government should not simply disclose but

¹¹¹ Carla Anne Robbins, "The Trouble with Drones," Bloomberg Business Week, 2/18/2013, Issue 4317, p 3

¹¹² Ibid, p 2

publicize much of its RPA [remotely piloted aircraft] program that remains in the dark. The battle for hearts and minds with respect to RPA's is being waged in the PR domain. Today, the enemy is winning."¹¹³ Indeed, the war on terrorism is as much about the battle over ideas and information as it is about physical confrontations on the battlefield. Yet, when it comes to the debate over drone strikes, the American government has essentially decided to unilaterally disarm. As Micah Zenko writes, "...because CIA strikes cannot be acknowledged, the United States has effectively ceded its strategic communications efforts to the Pakistani army and intelligence service, nongovernmental organizations, and the Taliban."¹¹⁴

The argument for all of this secrecy is based largely on the supposed need for deniability. As described above, the covert nature of these CIA attacks (which the US never officially acknowledges, as a matter of both law and policy) is part of their appeal for government officials on all sides. The CIA has long been reluctant—both for legal and operational reasons—to disclose almost anything about its drone strikes. On the other hand, the Pakistani government has been allowed the political luxury of looking the other way and claiming to know nothing about actions they have tacitly sanctioned. Supporters of the status quo warn that this convenient arrangement could evaporate if and when the Pentagon assumes control of the program.

¹¹³ Chapa, Capt. Joseph O., "Remotely Piloted Aircraft and War in the Public Relations Domain," *Air and Space Power Journal*, September-October 2014, pg. 43

¹¹⁴ Zenko, Micah, "Transferring CIA Drone Strikes to the Pentagon," Policy Innovation Memorandum No. 31, Council on Foreign Relations, pg 3

However, these dangers have been greatly exaggerated. While it is undoubtedly true that the deniability of CIA drone strikes has helped to smooth the contentious U.S. relationship with Pakistan, it's not as if most of the Pakistani people—or, indeed, the western media—is in the dark about what is actually happening. When hellfire missiles suddenly rain down on armed men in Waziristan, there isn't really any doubt as to who fired them. As described in Chapter I, Pakistani officials have readily provided data on US drone strikes to the United Nations.¹¹⁵ And interestingly, a U.S. federal court has already confirmed the ridiculousness of proceeding as if the mere fact that these operations are occurring is some kind of closely guarded secret.

When the ACLU sued the CIA to force the disclosure of key documents related to its drone program, the agency flatly refused to comply on the grounds that to even admit to possessing these papers would be to acknowledge the existence of a covert program. The U.S. Court of Appeals for the D.C. Circuit unsurprisingly did not find this argument particularly compelling. As the court noted, the President himself had referred to the CIA drone program in public speeches. Ultimately, in a damning opinion, the judges wrote that the CIA was asking the court to give its “imprimatur to a fiction of deniability that no reasonable person would regard as plausible.”¹¹⁶ Indeed, by now, the deniability

¹¹⁵ United Nations, Ibid

¹¹⁶ AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION v. CENTRAL INTELLIGENCE AGENCY, Appeal from the United States District Court for the District of Columbia, Argued September 20, 2012, Decided March 15, 2013, No. 1:10-cv-00436, pg. 14

that CIA drone operations supposedly offer—the virtue that provides the rationale for all the secrecy that encompasses the agency’s program—is exactly that, a fiction. And it is one that the U.S. government would be wise to dispense with in order to further the pursuit of its strategic objectives in the fight against Islamic extremism.

The complex, conflicting case for DOD drone control

As explained in Chapter I, misinformation about the destruction inflicted by American drone strikes has understandably sparked outrage across the Muslim world. One partial solution to this problem is to insist on greater openness and transparency. As Congressman Schiff editorialized in 2014, “...greater disclosure would be in our interest. In the absence of official accounts, inflated and often wildly inaccurate assertions of the number of civilian casualties — generally advanced by our enemies — fill the informational vacuum.”¹¹⁷ For this reason, if the U.S. government is to avoid creating more new terrorists than it kills, increasing the transparency of American drone programs is critical.

While the Pentagon should certainly do more to explain when and how DOD targeting policies are implemented, the U.S. military’s drone program is, by design, far more open to public scrutiny than the parallel effort operated by the CIA. But contrary to the public case put forward by those who favor moving all drone operations to DOD, it is not necessarily the case that the military would

¹¹⁷ Schiff, Adam B., “Let the Military Run Drone Warfare,” Op-ed, New York Times, March 12, 2014, http://www.nytimes.com/2014/03/13/opinion/let-the-military-run-drone-warfare.html?_r=0

maintain the same level of transparency were it to begin flying operations over Pakistan over other countries where deniability is considered politically valuable.

Similarly, Chapter II detailed the ongoing failure of the two Select Committees on Intelligence in Congress to exercise robust oversight over CIA drone operations. But again, contrary to the claims of those who strongly support transferring this responsibility to DOD, it is unclear that full military control over drone strikes would necessarily lead to greater congressional scrutiny of these operations. In fact, JSOC has arguably received even less concerned attention from the legislative branch than the CIA.

Micah Zenko writes that “...the U.S. government cannot legally acknowledge covert actions undertaken by the CIA” and therefore lead authority for targeted killings should be transferred to DOD.¹¹⁸ But is legal basis on which this argument rest accurate? The reality, as Georgetown Law Professor Marty Lederman and others have argued, is more complicated than Zenko’s statement might lead one to believe.

Covert actions are defined in law as “activity or activities of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly.”¹¹⁹ The statute goes on to spell out precisely what

¹¹⁸ Zenko, *Ibid*

¹¹⁹ Lederman, Marty, “Secrecy, Non-acknowledgement, and Yemen,” *Just Security*, February 26, 2014

must occur if some an operation is to be undertaken. First, these actions must be authorized in writing by the President. (This is known as a “written presidential finding.”) And second, Congress must be apprised of the activity.¹²⁰ These sensible, straightforward requirements are intended to ensure that the Executive Branch is held accountable for operations that may be extraordinarily sensitive and could have far-reaching consequences.

However—and here are two critical points often lost in the media coverage of this issue—the law only prescribes what steps must be taken if an operation is to be conducted covertly; it does restrict what kinds of operations may be publically acknowledged and, conversely, what operations must remain secret. Moreover, the statute makes no mention of which agencies these constraints will apply to. Consequently, Lederman writes, “...as far as the law is concerned, *both* the CIA and DOD can engage in activities that are not officially acknowledged; and likewise, *both* can engage in overseas activities that are officially acknowledged, as long as they have an independent source of affirmative authority for doing so,” such as the 2001 Authorization for Use of Military Force against Al Qaeda and its affiliates.¹²¹

According to this logic, the claim that, by law, none of the details pertaining to a CIA drone strike can ever be publically disclosed is false. A political decision was made to make these operations “covert” and the agency has subsequently

<http://justsecurity.org/7454/secretcy-nonacknowledgement-yemen>

¹²⁰ Ibid

¹²¹ Ibid

followed the legal restrictions that follow from this determination. By the same token, the law does not require that military strikes must necessarily be considered “non-covert.” In fact, DOD has opted against acknowledging its role in strikes in Yemen—a country where both the CIA and the U.S. military operate drones—under the logic that to refuse to accept responsibility for a particular drone attack would be to, ipso facto, assign credit to the CIA.

This legal analysis has important policy implications. In his New York Times Op-ed, Congressman Schiff wrote that moving all targeted killing programs to DOD would “...enable us to be more public about the successes and failures of the drone program, *since such operations would no longer be covert.*”¹²² [Emphasis mine] Yet, as we have seen, Schiff’s conclusion may not be valid. As Hannah Gais of the Foreign Policy Association has rightly pointed out, if the transition to DOD control were to happen, we can confidently say that “drone strikes *could* no longer be covert, but that doesn’t necessarily mean they *wouldn’t* be covert.”¹²³

Indeed, under a scenario in which President Obama’s vision has been realized and JSOC has assumed control of all drone strikes, one could easily envision that many or even all strikes in Pakistan and perhaps elsewhere would continue to go unacknowledged and would inevitably be wrapped in the same secrecy that currently subsumes CIA drone operations. Without additional reforms, moving

¹²² Schiff, Ibid

¹²³ Gais, Hannah, "Why transferring the drone program to JSOC doesn’t solve all problems," *Foreign Policy Association*, March 14th, 2014, <http://foreignpolicyblogs.com/2014/03/14/why-transferring-drone-program-to-jsoc-doesnt-solve-all-problems/>

full responsibility for drone warfare to the Pentagon will simply not be enough to guarantee any significant improvement in the transparency of these operations.

Similarly, shifting all targeted killings to military control will not, by itself, lead to more consequential congressional oversight of activities that have long cried out for greater attention from the legislative branch. The CIA currently informs the House and Senate Select Committees on Intelligence of all drone strikes and Senate committee staff reportedly view video of the attacks as well. This is consistent with longstanding congressional notification procedures that date to Operation Eagle Claw – the disastrous 1979 attempt to rescue hostages taken from the America embassy in Tehran.

Because of the need for extreme secrecy, President Carter decided that the intelligence committees would not be briefed by CIA Director Stansfield Turner until after the operation was completed. The congressional leadership was understandably displeased and in 1980, as part of a broader package of intelligence reforms, Congress established in statute the “Gang of Eight” notification procedure.¹²⁴ From this point on, while the Executive was explicitly required to brief Congress on sensitive covert actions, the President could limit notification to the House and Senate leadership as well as the chairs and ranking members of the two intelligence committee if, in his or her judgment, limiting

¹²⁴ Marshall Curtis Erwin, “‘Gang of Four’ Congressional Intelligence Notifications,” *Congressional Research Service*, April 16, 2013, pg. 5

notification to this select group was “essential to meet extraordinary circumstances affecting vital U.S. interests.”¹²⁵

More recently, in 2009, Democrats responded to the public outcry over CIA abuses in the period after the 9-11 attacks by once again strengthening the protocols governing the Gang of Eight. The Fiscal Year 2010 Intelligence Authorization Act required, for the first time, a written notification to the intelligence committees from the President explaining his or her rationale for resorting to the Gang of Eight procedure. The committees were also required to be informed of significant changes to any pre-approved action and all members of the intelligence panels—not just the members of the Gang—would now need to be briefed within 180 days after any covert operation was completed.¹²⁶

According to the two Intelligence panels, the CIA has largely abided by these requirements. As result, earlier this year, Senator Feinstein insisted that “...we have much more oversight over the intelligence [drone] program than over the military program, and that’s just a fact.”¹²⁷ Moreover, in the event that the Pentagon were to assume full control over these operations, it is also unclear how much of an appetite the House and Senate Armed Services Committee would have to take a more considered look at an expanded DOD drone program.

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Wood, Chris, “Moving the Drone Program from the CIA to the Pentagon Won’t Improve Transparency,” May 8, 2015, *Foreign Policy*, <http://foreignpolicy.com/2015/05/08/moving-the-drone-program-from-the-cia-to-the-pentagon-wont-improve-transparency-yemen-pakistan-jsoc/>

To date, the interest shown by the two committees in military drone operations has, at least from the outside, appeared relatively inconsequential. In addition, doubts have been raised about JSOC's willingness to share information about targeted killing operations with the Command's congressional overseers. Writing in *Foreign Policy*, Chris Woods quotes one high-ranking official who told him that he did not think "...JSOC doing it is going to be more transparent than the current situation. Because JSOC doesn't talk much to the Armed Services guys, compared to what some other committees get."¹²⁸¹²⁹

It is also presently unclear whether—if DOD were to begin flying covert drone strikes—the Department would be subject to the same notification requirements that currently bind the CIA. The letter of the law would seem to strongly suggest that the military would, in fact, need to provide the same kinds of notifications to Congress that the intelligence community currently provides because, again, the relevant statute does not make distinctions between agencies.

However, it is not publically known to what extent DOD presently briefs Congress on the relatively small number of covert operations it already conducts. As Jennifer Kibbe wrote back in 2004 as the intensity of U.S. drone warfare was beginning to mount, "Although the CIA has apparently met these [notification]

¹²⁸ Ibid

¹²⁹ Although Woods does not clarify which other committees his source is alluding to, the official presumably could only have been referring to the Intelligence panels because the Foreign Affairs Committees in both chambers have been generally been prevented from conducting oversight of drone operations.

requirements, there is considerable confusion over whether the military has or should.”¹³⁰ Kibbe notes that the U.S. Code does provide an exception for “traditional military activities”¹³¹ but it would certainly appear to be a stretch to argue that strikes from unmanned aircraft on non-combatant countries fit that definition. And in the absence of a strong legal precedent, it seems likely that the military would opt against rigorous disclosures to the legislative branch.

Regardless of how the law should best be interpreted, confusion clearly exists over an important aspect of congressional oversight of DOD drone operations. And this very uncertainty reinforces the case for instituting strong reforms that would clarify DOD’s legal obligations if and when full responsibility for drone strikes is transferred to the military.

The virtues of consolidation

As we have seen, vexing questions about congressional oversight complicate the case for military control of drone warfare. However, it’s worth noting that one factor which has undermined the legislative branch’s ability to oversee and improve U.S. drone operations is precisely the division of responsibility between two completely different organizations in the CIA and DOD that exclusively answer to two completely different House and Senate committees—the Intelligence and Armed Services panels, respectively. A case can be made that the simple fact of having a single program, operated by a single entity and

¹³⁰ Kibbe, Jennifer, "A Loophole for Covert Operations," *Brookings Institution: Opinion*, August, 8 2004 <http://www.brookings.edu/research/opinions/2004/08/08intelligence-kibbe>

¹³¹ Ibid

responsible to a single set of congressional committees will enhance Congress' power relative to the executive branch.

This speaks to one of the strongest arguments for sole military control of drone warfare. The current division of responsibility, with its parallel programs and duplicative systems and personnel, is unnecessarily redundant. Both the CIA and the Pentagon maintain, at great cost to the American taxpayer, two separate fleets of armed drones with identical capabilities. Yet, despite being designed to accomplish the same mission, the relevant systems employed by the CIA and the U.S. military are incompatible.¹³²

Perhaps more importantly, the status quo also creates bureaucratic barriers to providing much-needed clarity about U.S. drone programs, both to the American people as well as to affected populations overseas. As Zenko has written, "U.S. targeted killings are needlessly made complex and opaque by their division between two separate entities...Although drone strikes carried out by the two organizations presumably target the same people, the organizations have different authorities, policies, accountability mechanisms, and oversight."¹³³ And if we appreciate the benefits of this consolidation, we should also recognize that it would be far better to streamline these operations under the auspices of an organization which is already operating in a relatively transparent manner—the

¹³² ¹³² Gordon Lubold and Shane Harris, "The CIA , Not the Pentagon, Will Keep Running Obama's Drone War," *Foreign Policy*, November 6, 2013

¹³³ Zenko, *Ibid*

Department of Defense—instead of bringing drone programs together at agency that is legally, culturally and institutionally committed to secrecy.

In time, consolidating armed drone operations at DOD may even prove advantageous for the CIA. It is the nature of bureaucracies to resist giving up control over any of the functions they perform. And the CIA's leadership has no doubt strenuously opposed relinquishing the targeted killing mission and the tens of millions of dollars in funding that come with it. However, if this critical reform does eventually move forward, it may actually benefit the CIA in the long-term by forcing the agency to refocus on its core competencies.

Operating a fleet of unmanned aerial vehicles and conducting strikes on targets overseas is far removed from the agency's foundational mission of gather overseas intelligence. Giving up drone operations would compel the agency to once again concentrate its limited resources on this critical task instead of dividing itself institutionally between the fundamentally different responsibilities of collecting and assessing information, on the one hand; and the quasi-military act of identifying and eliminating suspected terrorists, on the other.

Conclusion: Setting a positive precedent

Given the various political and bureaucratic obstacles described above, it is unclear whether the renewed momentum behind moving all drone operations to the Pentagon will lead to any tangible progress. One possibility is that a

mutually-agreeable middle path will be sought by the Obama administration, allowing the CIA to remain intimately involved in the targeted killing of terror suspects. Under one such plan, the agency would still select and monitor priority individuals but would leave the act of actually eliminating them to the Defense Department. In the CIA's parlance, it would retain responsibility for the first two steps of a process which has become known as "find, fix and finish."¹³⁴ In essence, DOD would simply assume all responsibility for pulling the trigger.

This apparent "solution" is mere window-dressing and will do little to address the significant legal and transparency concerns that motivated President Obama to propose the transfer of responsibility away from the CIA in the first place. This arrangement could also create new coordination challenges that could lead to bungled operations and unnecessary civilian deaths as the agency and the Pentagon, with their conflicting cultures and priorities, are forced to work together in new ways and under trying circumstances.

Moreover, a compromise along these lines would foreclose the possibility of realizing perhaps the most significant benefit of realigning drone operations under the Pentagon's control – the potential for this single momentous change to act as a catalyst for a broader set of reforms. As detailed in this chapter, improvements in transparency, accountability and oversight will not be guaranteed simply because drone programs have been transferred to the

¹³⁴ The Washington Post, "CIA remains behind most drone strikes, despite effort to shift campaign to Defense," November 25, 2013

Department of Defense. Ensuring that drone strikes are conducted in a more cautious, selective and open manner will require other reforms, including mandating full disclosure of the policies governing these attacks and ordering a complete public accounting of when and where they occur. The act of consolidating control of U.S. drone warfare at the Pentagon has the potential to ignite public debate, engage congressional leaders and provide the impetus for implementing these transformational improvements.

Again, to be clear, shifting control of drone warfare to the Pentagon is not a clear remedy for all of the problems discussed in Chapter I. It would not necessarily reduce the potential for “blowback” among civilian populations affected by American drone strikes. Nor—given the US military’s record of obfuscation over the past decade—would it obviously produce the increased transparency and accountability that critics have long demanded. Indeed, this reform should not be regarded as a “solution.” Instead, based on the available evidence, DOD control of drone operations would seem to represent a sensible improvement over a deeply-flawed status quo. As described above, the military’s drone policies, with their clearly defined internal checks and balances, appear to be more exacting than the CIA’s, while the mere act of consolidation would reduce redundancy and improve congressional oversight.

Ultimately, this debate is important for reasons beyond the effectiveness of U.S. drone strikes. The choice to enlist the CIA in the targeting killing mission

arguably set a troubling precedent. Fundamentally, intelligence agencies should not be in the business of fighting America's wars overseas. As Senator McCain has colorfully argued, "Since when is the [CIA] supposed to be an Air Force of drones that goes around killing people?"¹³⁵

Given the United States' global standing, the way America exercises its power is sometimes just as important as the results that its power achieves. Especially when it comes to drone operations—a new dimension of human warfare—and at a time when as many as 76 different countries are pursuing drone technology,¹³⁶ the United States has the opportunity to establish a rulebook that, in time, others will be obligated to follow. As Daniel Byman has written, "The coming proliferation means that Washington needs to set a clear policy now on extrajudicial and extraterritorial killings of terrorists—and stick to it."¹³⁷

In light of this profound responsibility, there are moral as well as strategic reasons to believe that America would be well-served by adopting a new course. Specifically, the Obama administration should embrace the chance to set a global precedent that armed drones should be operated not by shadowy, clandestine agencies but by uniformed military forces acting in accordance with the laws of war.

¹³⁵ Christian Science Monitor, "Does it matter who runs US drone program? Pentagon could supplant CIA," March 20, 2013
<http://www.csmonitor.com/USA/Military/2013/0320/Does-it-matter-who-runs-US-drone-program-Pentagon-could-supplant-CIA>

¹³⁶ Robbins, pg 3

¹³⁷ Byman, pg 7

Conclusion: Towards a More Enlightened Approach to Drone Warfare

The United States isn't the only nation that conducts drone strikes. Britain operates some of the same sophisticated UAV's and uses them to target suspected terrorists from the skies above Iraq and Afghanistan. But though the systems they employ and the men in their cross-hairs fit almost identical profiles, British and American drone operators are guided by different sets of policies.¹³⁸

A detailed comparison of the two national approaches to drone warfare might prove illuminating, but the secrecy of the US drone program would probably make such an analysis infeasible, at least for outside observers. However, what we can say with some certainty is that the political decision to be far more transparent about the particulars of its drone operations doesn't appear to have significantly undermined British national security or the effectiveness of its drone program.

As the Australian defense analyst Rosalyn Turner has written, "The UK has made an effort to embrace transparency around its use of [drones] in military operations, most likely to allay speculation that it conducts covert strikes that have proven unpopular for the US...The UK's use of drone strikes may not have garnered as much attention as the widespread actions of the US. Yet in many ways the UK's more limited use of armed drones has shown how successful this approach can be."¹³⁹

¹³⁸ Rosalyn Turner, "Lessons for the ADF from Britain's armed drone program," *The Strategist*, February 6, 2015

¹³⁹ *Ibid*

Admittedly, British UAV's do not engage in politically problematic strikes on Pakistani or Yemeni soil. Still, their activities are documented, the statistics are made publically available, and the government regularly answers questions about their use—important steps the US government has been loath to consider.

Contrary to the view that prevails at the CIA and the Pentagon, the British experience would seem to suggest that greater openness might not be such a fraught proposition after all. Indeed, throughout the preceding chapters, I have argued that enhanced transparency would benefit the United States not just through the sanitizing effects that sunlight frequently has on shadowy government programs. In addition, and perhaps more importantly, greater openness would address perhaps the gravest failing of the American targeted killing program—the fact that it continues to profoundly alienate people across the Muslim world, feeding into the very notions of unmitigated, out-of-control American power that the Obama administration has been so keen to mitigate and that America's adversaries have been so eager to promote.

As explained in Chapter I, this points to an over-arching challenge that President Obama and his successor must address. On the one hand, the United States needs a drone program that is both effective and expansive enough in its scope to extinguish extremist threats from Africa to the Middle East to Central Asia. On the other, that program must be precise enough and cautious enough to avoid radicalizing civilian populations that live, in many cases, directly alongside the

targets of American aggression. It's a tricky task and one that high ranking officials in the Obama Administration have extensively pondered, especially in the wake of American drone strikes that missed the mark with gruesome consequences.

Threading this needle is made even more difficult by the fact that the right policy—assuming one can be identified—cannot always be implemented through fiat alone, as President Obama himself discovered when he called for the transfer of drone operations to DOD control. As with nearly everything in Washington, bureaucratic and congressional politics must also be negotiated. And indeed, Congress' striking indifference to the failings of American drone warfare speaks to the urgent need for reforms not just to clandestine programs like this one, but also to the manner in which these programs are overseen by the legislative branch.

What, then, should be done? First, the US government should consider conducting—and eventually making public in some form—precisely the kind of broad, independent analysis of the strategic costs and benefits of the US approach to drone warfare that this paper has attempted to furnish. Of course, such a review would benefit from access to classified data—a resource that outside assessments of US drone policies (like this one) have obviously lacked.

In addition, the findings in the preceding chapters point to several straightforward reforms, some of which have already been discussed in detail. The horrendous deaths of the Yemeni wedding party described in Chapter I and the accidental killing of two Western hostages as explained in Chapter III would seem to lead to a very obvious recommendation – that American drone operators should know whom they are aiming at, with at least a fair degree of certainty, before pulling the trigger. Of course, intelligence will never be perfect and even the best surveillance can lead to the wrong conclusions. Still, the sheer number of civilians killed and the frequency with which the media and NGO's have reported on strikes gone wrong, would seem to indicate that this kind of discretion is not an institutional priority for either the CIA or the Department of Defense.

Incredibly, the strike that killed American aid worker Warren Weinstein was not the first time a drone had fired on a compound where extremists were holding a US citizen captive. Several years earlier, journalist David Rohde was captured by Taliban insurgents and removed to the same remote corner of Pakistan. While there, an American missile exploded just outside the building where he was held, killed several low-level associates of his captors. Just like Weinstein incident, the CIA had no knowledge that Rohde was being held in the vicinity. Thankfully, helped by a captive Afghan, Rohde managed to escape and has now

understandably become a critic of the American drone program that could so easily have killed him.¹⁴⁰

One reform endorsed by Rohde has already been implemented, but only on a limited basis. So called “signature strikes” are drone attacks based not on specific intelligence about a particular individual (these are known as “personality strikes”) but instead, killing missions launched when men viewed thousands of feet from the ground are behaving in a manner that suggests they are probably extremists or insurgents. This targeting method has proven extremely controversial and new restrictions were put in place in 2013 by the Obama administration in response to criticism that “signature strikes” were responsible for unacceptable numbers of civilian casualties.

However, according to reports in the news media, CIA drone operations over Pakistan were exempted from these rules.¹⁴¹ While anonymous sources at the intelligence agency continue to vouch for their effectiveness, the lack of discretion inherent in the signature strikes that caused the death of Warren Weinstein, almost killed David Rohde and continues to produce high numbers of civilian casualties leads inextricably to the conclusion that they should be prohibited. A similar argument can be made for banning strikes against low-level fighters outside of the traditional battlefield. These men are readily replaceable

¹⁴⁰ Rohde, David, “What the United States Owes Warren Weinstein,” *The Atlantic*, April 28, 2015

¹⁴¹ *Wall Street Journal*, “Obama Kept Looser Rules for Drones in Pakistan,” April 26, 2015

and their deaths contribute little to the advancement of America's strategic objectives.

The military drone program does not, at least officially, engage in signature strikes. As explained in detail in Chapter III, this is just one of many reasons why President Obama's proposal to grant full control of drone warfare to the military makes practical sense. Yet this reform—however impactful it might appear—is far from a panacea. Unless Congress and the Administration act, there is a significant risk that the newly emboldened DOD drone program could end up being just as bad, if not worse, than the CIA program it subsumed.

Specifically, while the CIA conducts covert strikes and the military currently does not, the intelligence agency is at least legally bound by strict congressional notification requirements. As described in Chapter III, one can easily imagine a scenario in which the military begins executing its own covert strikes but considers itself exempt from the obligation to keep Congress rigorous informed of these activities. That's why Congress should assert its constitutional prerogative and clarify first and foremost that, except under rare circumstances, drone strikes should be conducted overtly. And second, that all covert operations—regardless of which agency or department leads them—are equally bound by requirement to keep Congress fully informed.

Of course, as we've seen, meaningful congressional action on this front appears unlikely. Part of the genius of the American system of government is the recognition that intense deliberation and debate often yields better policy than unthinking acquiescence. Unfortunately, Congress' attitude towards the American targeted killing program has been marked by undue deference and almost embarrassing indifference. This troubling state of affairs could be rectified in part by enabling more members of Congress to meaningfully participate in the policy-making process. While this raises the potential for more unauthorized leaks of sensitive information, that risk is substantially outweighed by the critical need for more robust, independent and objective oversight of clandestine programs, including drone strikes.

Drones are now an indispensable instrument of American foreign policy and yet the House and Senate Foreign Affairs Committees have been prevented for conducting meaningful oversight of US drone programs. Similarly, as described in Chapter II, efforts by the Senate Armed Services Committee to gain a complete picture of American drone operations by including the CIA in hearings on the subject have been stymied by the agency and the White House. These mindless turf battles have done nothing to enhance Congress' power vis-à-vis the executive and have prevented reform-minded members of the legislative branch from contributing to the debate. This is an unfortunate dynamic and one that Congress and the Obama Administration should seek to transform as part of a broader effort to reform America's targeted killing program.

It's important to note the limitations of these reforms. Even if they were fully implemented (an unlikely prospect), it is far from clear that a more strategically effective American drone program would necessarily turn the tide of the global war on terror or even make a telling difference in any specific theater. Despite launching hundreds of strikes over the past decades, the United States has failed to halt the rise of the Islamic State of Iraq and the Levant (ISIL) or to deal a definitive blow to the Taliban insurgency in Afghanistan. This is a reflection less of the shortcomings of the US drone program (although, as we've seen, they are significant) and more of the inescapable reality that American military force alone is incapable of addressing the deep-seated political and religious rifts that gave rise to the conflicts in these countries. As I stated at the close of Chapter I, drone strikes may be among the most potent and prominent instruments of American power in the struggle against Islamic extremism but, ultimately, they are only a tool. Absent a cohesive, overarching strategy for prevailing in the war on terror that effectively incorporates all of the levers of American policy—including drones—the reforms discussed above may have a limited impact.

It's also worth noting some of the critical questions that lie beyond the scope of this analysis. While I focused here on relatively straight-forward concerns regarding the strategic effectiveness of American drone strikes and the merits of certain proposed reforms, academics and policy-makers should also attend to other weighty and sometimes less concrete matters connected to drone warfare.

Specifically, as I mentioned previously, significant legal questions remain about the legality of targeted killings under both domestic and international law, especially where US citizens are concerned. Critics have also raised the possibility that the absence of any real risk to US personnel may—intentionally or not—make commanders more cavalier about their use, potentially entangling the United States in more conflicts over time. As the authors of the Stimson Task Force write, “The increasing use of lethal UAVs may create a slippery slope leading to continual or wider wars. The seemingly low-risk and low-cost missions enabled b UAV technologies may encourage the United States to fly such missions more often, pursuing targets with UAVs that would be deemed not worth pursuing if manned aircraft or special operation forces had to be put at risk.”¹⁴²

Finally, important questions have been raised about the psychological effects of drone warfare—both on decision-makers and operators; whether its very remoteness disguises the inherent cruelty and human suffering of war. Some have even argued that this technology has transformed the act of killing into something akin to playing a video game.¹⁴³ In these and in countless other ways, large and small, drones may over time come to reshape the “American way of war”—a topic which undoubtedly merits additional scholarly inquiry.

¹⁴² Stimson, p. 31

¹⁴³ Brown, Mark, “Life as a US drone operator: 'It's like playing a video game for four years'” The Guardian, July 28, 2013

In closing, I will note that there is a certain irony in the fact that a President seeking to repair the fractured relationship between the United States and the Muslim world has nevertheless presided over the dramatic expansion of a program of deadly drone strikes which has proven exceptionally unpopular in these countries.¹⁴⁴ Of course, President Obama would probably argue that any other means of eliminating suspected terrorists, including the deployment of ground troops, would doubtless have had a far more pronounced impact on public opinion in these countries.

Still, a strong argument can be made that the way in which drone operations under his administration have been conducted is, in key respects, at odds with his own conception of how the struggle against Islamic extremism can be won—not by applying maximal force but by employing American power in smarter, more effective ways. This is a President who recognizes the contest of ideas that lies at the heart of the fight against Islamic terrorism and yet has failed to ensure that drone strikes are helping—and not hurting—the American cause in this struggle.

Over his remaining year and a half in office, President Obama would be wise to seek to implement a drone policy which is more consistent with America's strategic interests and with his own broad vision for American foreign policy.

¹⁴⁴ Pew Research Center, Ibid

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